

EXHIBITS

- Exhibit A Plaintiff's EEOC Charge Letter
- Exhibit B First Data EEOC Position Statement
- Exhibit C Plaintiff's Rebuttal to Position Statement
- Exhibit D Letter from Defendant Marino to Plaintiff dated November 18, 2016
- Exhibit E Texts between Defendant Marino and Plaintiff on November 19, 2016
- Exhibit F E-mails between Defendant Johnson and Plaintiff on December 15 and 16, 2016
- Exhibit G FMLA Leave Approval Letter from First Data dated December 15, 2016
- Exhibit H Physician's Return to Work Authorization dated January 10, 2017
- Exhibit I Defendant Marino's First Data Web Site Biography
- Exhibit J Employment Letter between First Data and Plaintiff dated June 12, 2014
- Exhibit K First Data Job Twitter Openings February 27, 2017
- Exhibit L First Data Twitter from August 11, 2017 (Showing Gap Between July 28, 2016 and July 30, 2017)
- Exhibit M CEO Action for Diversity and Inclusion
- Exhibit N First Data Press Release from December 22, 2016 Marino and Whalen linked to on their LinkedIn pages

EXHIBIT A

THE LAW OFFICE OF SHAWN SHEARER, P.C.

3839 MCKINNEY AVENUE, SUITE 155-254

DALLAS, TEXAS 75204

OFFICE: (214) 434-1594

SHAWN@SHEARERLAW.PRO

March 2, 2017

VIA USPS RETURN RECEIPT REQUESTED

RECEIVED

MAR 06 2017

Director
Equal Employment Opportunity Commission
Atlanta District Office
100 Alabama Street, S.W., Suite 4R30
Atlanta, GA 30303

EEOC-ATDO

RE: ADA and ADEA Charges by Steve Barger against First Data Corporation
NEW CHARGE FILING

Dear Sir or Madam:

I represent Steve Barger ("Mr. Barger") in connection with the termination of his employment with First Data Corporation ("First Data"), and in the filing and prosecution of charges by Mr. Barger under the Age Discrimination in Employment Act (29 U.S.C. §621 et seq.) ("ADEA") and the American's with Disabilities Act (42 U.S.C. §12101 et seq.) ("ADA"), including retaliation, against First Data. Mr. Barger is 72 years old and a cancer survivor.

Please accept this letter, the attached Charge Form, and Mr. Barger's attached supporting affidavit (with exhibits), together, as an official charge of discrimination against First Data under both the ADEA and ADA in connection with its adverse employment action taken against Mr. Barger.

Also, please accept this letter as an appearance by Shawn Shearer of The Law Office of Shawn Shearer, P.C. on behalf of Mr. Barger. Mr. Barger's contact information is included both on the Charge Form and Mr. Barger's supporting affidavit attached to this letter. I would ask, however, that all correspondence be directed to Shawn Shearer as Mr. Barger's counsel, using the contact information above.

Set forth below are the general facts surrounding Mr. Barger's employment with First Data and his termination by First Data. Following the factual description is the legal analysis justifying a finding that First Data violated both the ADA and ADEA in its treatment and termination of Mr. Barger.

FACTUAL BACKGROUND – BARGER/FIRST DATA

Mr. Barger has been an executive in the financial services industry for 40 years. During that time, Mr. Barger has served as an executive of Citigroup Financial Services, Primerica, Shearson/Smith Barney, and First Data. Mr. Barger also operated his own consulting business with major financial institutions as clients.

In June 2014, Mr. Barger accepted the position of Senior Vice President – Sales Force Effectiveness with First Data. Mr. Barger remained in that position his entire tenure of employment. In this role, Mr. Barger was charged with overseeing and implementing First Data's sales philosophy transformation throughout its worldwide sales force, and to coach, motivate and inspire his staff and sales force towards those goals. As Senior Vice President, Mr. Barger received an annual salary of \$480,000, an annual bonus, and one grant of options to purchase common stock of First Data. Mr. Barger's salary did not increase from his initial employment in 2014, and his annual bonuses declined each year. Mr. Barger performed his job duties admirably, maintaining a typical work schedule of 7 a.m. to 9 p.m. daily, working in the office nearly every weekend, and traveling domestically and internationally on company business as required.

In late February 2016, Mr. Barger's physicians discovered a small nodule on his left vocal cord that they suspected to be cancerous. Mr. Barger underwent a biopsy of his vocal cord. Upon analysis of the biopsy sample, Mr. Barger was diagnosed with an invasive form of squamous cell carcinoma – cancer of the vocal cord. Mr. Barger's physicians recommend radiation treatment in hopes of avoiding a need for surgery.

After receiving this diagnoses, Mr. Barger personally advised Dan Charron (First Data Executive Vice President Head of Global Business) and Anthony Marino (First Data Executive Vice President Human Resources) of the circumstances and his physician recommendations.

Within days thereafter, Mr. Frank Bisignano (Chairman & CEO), Guy Chiarello (President), Jeff Hack (Executive Vice President/COO Global Business Solutions, who left First Data prior to the events subject of this charge of discrimination), and, Rhonda Johnson (Vice President Human Resources), became aware of Mr. Barger's medical condition, diagnoses and proposed treatment.

Mr. Bisignano (Chairman and CEO) strongly suggested that that Mr. Barger receive a second opinion from Dr. Louis Harrison, Chair of the Radiation Oncology Department at Moffitt Cancer Center in Tampa, Florida. Mr. Bisignano told Mr. Barger that Dr. Harrison was a close friend and his former physician, and that Mr. Barger should go see him. Mr. Barger did travel from Atlanta to Tampa to visit Dr. Harrison as urged by his Chairman and CEO. Dr. Harrison concurred with the radiation treatment recommendation.

From March 28 through May 5, 2016, Mr. Barger underwent 28 separate radiation treatments in Atlanta. Throughout these six weeks, receiving five radiation treatments per week, Mr. Barger

maintained his normal work patterns (7 a.m. to 9 p.m.), Mr. Barger returned to the office after each radiation treatment (each treatment lasting usually approximately 45 minutes from his arrival at the radiation facility until his departure back to work), Mr. Barger did not miss any days of work, and Mr. Barger continued to work from First Data's office nearly every weekend day. During this aggressive radiation treatment regimen, Mr. Barger fully performed all of the functions of his job, plus advised others outside of his responsibilities, as he had always done.

After his last radiation treatment on May 5, 2016, Mr. Barger continued his same work pattern and traveled on First Data business.

In August 2016, Mr. Barger returned to his physicians for an evaluation of the effectiveness of the radiation treatments. Mr. Barger received bad news. The radiation had been ineffective in addressing the growth. Mr. Barger's physicians advised him that a laryngectomy (surgical removal of the voice box) was required to prevent the spread of carcinoma into his lymph system (which likely would be fatal).

Dr. Harrison, whom Mr. Barger's CEO urged him to see, scheduled Mr. Barger for surgery by Dr. Tapan Padhya at Moffitt Cancer Center in Tampa, Florida.

Mr. Barger advised all of First Data senior management listed above that his laryngectomy surgery was scheduled for September 6, 2016 in Tampa. Mr. Barger continued to maintain his usual work patterns.

On September 4, 2016, Mr. Barger traveled with his wife to Tampa and underwent surgery on September 6th. This highly invasive surgery included separating the connection between the esophagus and trachea, creating a stoma (a hole in his throat just above his collar bone and sternum) through which he would breath, inserting a prosthetic device to connect the trachea to the esophagus for use in speaking after he had healed for surgery, and inserting a tube into his stomach that exited his side for feeding while his esophagus healed from surgery.

Mr. Barger remained in the Moffitt Cancer Center for several weeks after the operation. Upon being discharged from the hospital, Mr. Barger resided in a nearby hotel, returning to his physicians for examinations numerous times per week. Mr. Barger then experienced complications healing from surgery, and he re-entered the Moffitt Cancer Center for additional surgery. Mr. Barger was again discharged from the hospital. After nearly seven weeks in Tampa, in and out of the hospital and hotel, Mr. Barger returned to his home in Atlanta in late October 2016.

During his entire time in Tampa, Mr. Barger kept senior management aware of his condition, continued to communicate with his team and management, and worked on First Data business nearly every day (even while in the hospital recovering).

A few weeks after his release from the hospital in Tampa, on or about November 3, 2016, Mr. Anthony Marino, First Data's EVP of Human Resources based in New York, flew by private jet to Atlanta, and visited Mr. Barger at his personal residence. At the time of this visit, Mr. Barger

was only 60 days out from major surgery, had just returned to his home after six weeks in Tampa, he was still in the early stages of recovering from major surgery, he was still reliant on his feeding tube, and he was unable to speak without significant effort, even then for only short quiet statements, if at all. Mr. Marino observed Mr. Barger in this condition and quickly took actions following that meeting that are blatant violations of the ADEA and ADA, and Mr. Marino, as EVP of Human Resources of a publically traded company, knew, or absolutely should have known, full-well that his conduct was a violation of the law.

Shortly after his visit to Mr. Barger's residence, Mr. Marino, on November 19, 2016, advised Mr. Barger by letter and by text message that First Data had decided to move Mr. Barger onto its short-term disability policy. Upon leaving Atlanta, Mr. Barger had more than six weeks of available paid-time-off, covering the period of September 4, 2016 through October 23, 2016. First Data approved Mr. Barger's request for FMLA leave commencing October 24, 2016 with that approved FMLA leave ending January 16, 2017.

At no time since Mr. Marino's visit to Mr. Barger's house on November 3rd (soon after he was released by his doctors in Tampa to return to his home in Atlanta) has any officer or director of First Data personally met with Mr. Barger. First Data has no idea of the progress Mr. Barger has made in his recovery. Mr. Marino was operating solely on his November 3rd observations, and Mr. Marino formed a stereotypical view of a 72 year-old man with cancer. Mr. Marino's actions from that meeting in November forward all reflect exactly the type of conduct that is specifically prohibited by the ADA and ADEA. In fact, First Data's ONLY knowledge is contained in Mr. Barger's physician letter which states that Mr. Barger is cleared to work without any restrictions. This knowledge is in direct conflict with First Data's adverse action against Mr. Barger's employment.

At all times throughout his surgery and recovery, Mr. Barger indicated to senior management his intention to return to his job.

Mr. Barger continued his recovery during November and December 2016, and continued to be involved in conducting First Data business from his home. First Data provided Mr. Barger a computer for purposes of conducting First Data business from his home office.

In late December 2016, Mr. Barger's throat had healed sufficiently for his feeding tube to be removed and he could begin eating. Mr. Barger also began therapy to learn to use the implanted speech prosthetic device, once again providing him the ability to speak.

On Tuesday, January 10, 2017, Mr. Barger received clearance from his physician to return to work. This medical clearance was provided to First Data on January 10, 2017 and Mr. Barger arranged with Ms. Johnson, VP of HR in Atlanta, for his return to work on Tuesday, January 17, 2017. Mr. Barger's FMLA leave expired as of Monday, January 16, 2017, which was the MLK holiday and the First Data Atlanta office was closed.

On Friday, January 13, 2017, just three days after providing return to work authorization and establishing a return to work date, Mr. Barger received a call from Ms. Johnson in which she

indicated Mr. Barger had been terminated. Ms. Johnson did not specify what officer at First Data had terminated Mr. Barger. Ms. Johnson is a VP, Mr. Barger is a SVP, and they are not within the same organizational department. By e-mail at 7:50 p.m. that Friday night before Mr. Barger was to return to work the following week, Ms. Johnson forwarded a standard First Data form of agreement and release providing for three weeks' pay and a full release of First Data and all of its officers.

Between January 13, 2017 and February 28, 2017, Mr. Barger and First Data, through their counsel, attempted to negotiate a mutual agreement. At no time during these negotiations, nor at any time after Mr. Barger delivered his return to work authorization, despite months of Mr. Barger indicating he intended return to work, did First Data offer to restore him to a substantially similar position or offer a vacant position of any type.

Once my firm raised the ADA, FMLA, ADEA issues, First Data's negotiating was not in good faith. First Data refused to produce standard corporate governance documents, went days without communicating (including the final two days of February, which were the crucial dates to finish an agreement), and threatened Mr. Barger with untrue and slanderous statements made to me. First Data's, and its counsel's, bad faith tactics, refusal to produce documents, and slanderous conduct during negotiations was in direct retaliation to my firm raising the ADA issues. This conduct increased Mr. Barger's legal costs and expenses and was not conducive to reaching a mutual agreement.

In just four months, from September 4, 2016 to January 10, 2017, Mr. Barger underwent significant surgery and recovered. Mr. Marino observed Mr. Barger at his home in early November, very early into the recovery process. Mr. Marino then began a series of events to drive Mr. Barger from his position, including moving Mr. Barger to short-term disability, placing an individual from Mr. Marino's HR organization (much younger than Mr. Barger) as the "interim" leader of Mr. Barger's team in his absence, and spearheading an effort to permanently move Mr. Barger's organization from reporting to EVP Jeff Hack to reporting to Mr. Marino's own organization.

Mr. Marino executed an internal corporate land grab using Mr. Barger's disability and age as his primary tools. All of Mr. Marino's actions were predicated on his one and ONLY post-surgery, in-person interaction with Mr. Barger on November 3rd where Mr. Marino formed his opinion that Mr. Barger was a stereotypical feeble, old, cancer patient, dispensable to corporation, and ideally situated as prey for Mr. Marino's plan.

Mr. Marino did not have personal knowledge of Mr. Barger's substantially improved condition on January 10th (the date of his release to work). Upon learning of Mr. Barger's release to return to work, and despite having no personal knowledge of Mr. Barger's condition, motivated by the First Data's internal corporate culture of individual executive expansion of power and influence, and his desire to expand his influence within that environment by keeping Mr. Barger's team under his control permanently (not just on an interim basis), Mr. Marino took adverse action against Mr. Barger's employment.

Mr. Marino did exactly what the ADA and ADEA are designed to prohibit. Mr. Marino initiated an in-home visit under the false pretense of “friendship” and interrupted Mr. Barger’s convalescence. Mr. Marino clearly was using the visit as justification to permanently move and keep Mr. Barger’s team under his control. Mr. Marino stereotyped Mr. Barger, based on his age, and Mr. Marino’s non-medical opinion of Mr. Barger’s physical condition from months prior when Mr. Marino invited himself to Mr. Barger’s home. Mr. Marino then used that inaccurate, selfishly motivated, non-medical view (in direct conflict with Mr. Barger’s physician’s release to work), to intentionally discriminate against Mr. Barger based on his disability and his age, and took the opportunity to expand his HR universe within First Data at Mr. Barger’s expense.

Mr. Barger was ready, willing and able to return to work as of January 10, 2017. Once Mr. Barger produced his medical clearance, Mr. Marino terminated Mr. Barger. First Data’s failure to preserve Mr. Barger’s position, failure to offer a comparable position, and failure to even offer an alternative position, all while moving his duties to a younger employees, violate the ADA and ADEA.

AMERICAN’S WITH DISABILITIES ACT CHARGE AGAINST FIRST DATA

The Americans with Disabilities Act 42 U.S.C. §12112(a) provides:

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to . . . discharge of employees. . . and other terms and conditions of employment.

For ADA purposes, (i) First Data is a “covered entity” as it has more than 20,000 employees (see First Data Corporation Form 10-K filed with The U.S. Securities and Exchange Commission dated February 28, 2017); (ii) Mr. Barger was an “employee” of First Data, and First Data was the “employer of Mr. Barger; and (iii) Mr. Barger was and is a “qualified individual.”

Mr. Barger’s throat cancer was a recognized “disability” as it impaired a major life activity, including impairing a major bodily function (normal cell growth). Mr. Barger’s condition following his recovery from laryngectomy continues to constitute a disability for numerous reasons, including Mr. Barger’s voice box has been removed, and his speaking is now assisted by a prosthetic device.

Leave has been repeatedly recognized as a “reasonable accommodation.” The EEOC “Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act Notice Number 915,002”, item number 21, provides:

Under the ADA, an employee who needs leave related to his/her disability is entitled to such leave if there is no other effective accommodation and the leave will not cause undue hardship. An employer must allow the individual to use any accrued paid leave first, but, if that is insufficient to cover the entire period, then the employer should grant unpaid leave. . . . As for the employee’s position, the ADA requires that the employer hold it open while the employee is on leave

unless it can show that doing so causes undue hardship. When the employee is ready to return to work, the employer must allow the individual to return to the same position (assuming that there was no undue hardship in holding it open) if the employee is still qualified (i.e., the employee can perform the essential functions of the position with or without reasonable accommodation).

Mr. Barger exhausted his paid-time-off during the period between September 4, 2016 and October 24, 2016. From October 24, 2016 through January 16, 2017, Mr. Barger was on FMLA protected leave. Leave covered by the FMLA cannot be considered an “undue hardship” when that leave is statutorily required.

Mr. Marino, First Data’s EVP of HR, texted the following statements to Mr. Barger on November 19, 2016 (just two weeks after his visit to Mr. Barger’s personal residence):

“Later today you will get a fed ex from me that will require you to begin the disability claims process (short-term and then if necessary long term). . . . This will allow you to focus all energies on getting better and not be burdened by First Data work. **We will announce Robin as the interim leader** on Monday **so your team will have support.**”

“When you return, your salary restored and you will be given a comparable job.”

“Yes this means you need to shut down for a little while . . . **you will fully concentrate on getting strong and be back soon.**”

First Data clearly knew of its obligations under the ADA in providing Mr. Barger his leave accommodation, providing an “interim” leader for his team, promising that his salary would be restored upon return, promising he would be given a comparable job upon return, and expressing First Data’s and Mr. Marino’s desire for Mr. Barger to return to work soon.

Less than two months after Mr. Marino’s visit to Mr. Barger’s residence, on January 10, 2017, Mr. Barger provided First Data his doctor’s authorization to return to work and was eager to return.

Three days after delivering medical clearance, on January 13, 2017, Mr. Barger was notified by Ms. Johnson within Mr. Marino’s Human Resources organization that he was terminated effective February 28, 2017. Mr. Barger was instructed not to return to the office as Mr. Barger and Ms. Johnson had planned just days before, and Mr. Barger was instructed not to contact any members of his team.

Mr. Barger’s termination under these conditions is a clear failure to provide a reasonable accommodation. Leave as an accommodation only makes sense if there is a right to return at the end of the leave period. Mr. Barger was denied that right to return. A clear violation of §12112(a), as there was no undue hardship on First Data to maintain Mr. Barger’s position, an interim leader was installed for less than two months, and Mr. Barger was still within his FMLA permitted leave. First Data’s violation of the ADA was knowing and intentional, as Mr.

Marino's text messages on November 19, 2016 evidence First Data's understanding of its obligations under the FMLA and ADA. Mr. Marino and First Data knowingly violated the requirements of the ADA.

Mr. Barger was never given an opportunity to return to his position. No employee, officer or director of First Data met with Mr. Barger in person after Mr. Marino's November 3rd visit. No employee, officer or director from First Data personally observed the significant improvement in Mr. Barger's medical condition between November 3rd and January 10th. Mr. Barger is fully capable of performing his job, but was never even given a chance to return to the office and was barred from entry to the building and communication with members of First Data's staff. First Data assured that the interactive process around Mr. Barger's return never even started by terminating Mr. Barger before he could even return.

First Data further violated the ADA in its conduct of negotiations between January 13 and February 28, 2017. Never during this time, despite these very ADA issues being raised by counsel for Mr. Barger, did First Data ever offer Mr. Barger an opportunity to return, to be reassigned, or any other accommodation, despite the fact Mr. Barger had already provided medical clearance to return to work. Mr. Barger's delivery of his medical authorization and intent to return triggered First Data's obligation to seek a reasonable accommodation of Mr. Barger's disability. Instead of engaging in reasonable accommodation interactive discussions, First Data simply fired him and negotiated a termination – that is not how the interactive process is supposed to work.

AGE DISCRIMINATION IN EMPLOYMENT ACT CHARGE AGAINST FIRST DATA

The ADEA provides in 29 U.S.C. §623(a)(1) that it is unlawful for an employer to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, because of such individual's age.

First Data is an employer as defined in 29 U.S.C. §630(b). Mr. Barger is an employee for purposes of 29 U.S.C. §630(f). Mr. Barger is 72 years of age, thus exceeding the 40 years of age requirement of 29 U.S.C. §631(a).

As evidenced by Mr. Marino's November 19, 2016 e-mails, Mr. Barger's position was filled on an "interim" basis Robin Ording, Vice President Leadership Development. Ms. Ording is in her mid-forties. Mr. Marino is in his early-fifties.

Mr. Barger's termination permanently transferred Mr. Barger's duties to Ms. Ording in violation of the ADEA, and Ms. Ording's responsibilities prior to assuming Mr. Barger's position were transferred to younger personnel.

Mr. Dan Charron (Executive Vice President Head of Global Business) told Mr. Barger, prior to his diagnoses, that Mr. Barger's salary was excessive. Mr. Charron, who is approximately 52 years of age, and was not within Mr. Barger's chain of reporting during his surgery and recovery,

repeated this line throughout the corporate structure, including discussing possible ways to reduce salary costs across the company.

Mr. Charron is not in a perfect position to be complaining if cost control for the benefit of the company is his actual goal. As disclosed in First Data's Schedule 14A Proxy Statement filed with the Securities and Exchange Commission on March 11, 2016, in 2015, Mr. Charron himself received nearly \$12 million in "sign-on awards" (comprised of a \$5 million cash payment, time vested stock award of \$4,500,000 and \$2,496,500 in time vested options), he received a salary of more than \$656,000 and also annual cash bonus award of more than \$283,500. Mr. Charron's compensation package in 2015 was nearly \$13 million as disclosed by First Data in its Proxy Statement. Given this type of excess, and Mr. Charron's, Mr. Marino's and Ms. Ording's ages, it is clear that there was an organized effort by Mr. Charron and Mr. Marino to strip Mr. Barger of his authority, remove him from his position, and replace him with Ms. Ording, who in turn would pass some of her lesser responsibilities down the chain. Mr. Charron and Mr. Marino worked together to terminate an older employee and absorb his organization into Mr. Marino's organization, and have attempted to disguise their moves under a cloak of desire to reduce salary expense, but it really was a plan to eliminate those of a generation before them.

Based upon Mr. Charron's and Mr. Marino's analysis of First Data's structure, Mr. Charron, Mr. Marino and others within First Data, targeted Mr. Barger for termination and replacement by Ms. Ording, even when his salary was established by agreement between Mr. Barger and the company in 2014, he had not taken a raise, and his bonus had not been paid as promised in 2015 or 2016. Despite decreasing compensation per year, Mr. Barger, age 72, was terminated by a coordinated effort of individuals (not within his reporting structure, in their mid-40s and early 50s) under the pretense of cost control. Mr. Barger's salary (which is more than justified based on his years of experience in the field, and his value to overseeing First Data's sales force transformation, a task Mr. Barger had approached for other significantly larger financial service institutions, banks, and brokerages before) was paltry in comparison to the excesses of Mr. Charron's compensation and Mr. Marino's whimsical private aircraft flights. This is exactly the type of termination that the ADEA was designed to thwart.

CONCLUSION

The damages suffered by Mr. Barger by the willful, knowing, intentional and malicious conduct of First Data, and in particular, Mr. Marino EVP of HR and his organization, have severely damaged Mr. Barger in the twilight of his career. Not only was Mr. Barger recovering from significant surgery, he is now dealing with the loss of income, loss of group life insurance, additional costs in pursuing his rights under the ADA and ADEA, and very long odds on obtaining substantially similar employment. The conduct of First Data and Mr. Marino is morally bankrupt.

Given the severity and egregiousness of First Data's violations, I request that the Commission issue a right-to-sue letter as quickly as possible. Mr. Barger is a cancer survivor. It appears that the cancer is gone, but it has been only five months since his surgery, and there can be no guarantees as to his future condition. The quicker that we may move to protect his rights and

litigate his claims, the better. Delays in the administrative process could significantly impact his ability to recover for the unlawful discrimination he has suffered.

I can be reached at (214) 434-1594 if you have any questions or require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Shawn E. Shearer', written over a horizontal line.

Shawn E. Shearer

Attachments:

EEOC Charge Form 5

Affidavit of Steven Barger (with exhibits)

cc: Steve Barger

EXHIBIT B



Gary B. Eidelman
Phone: (410) 332-8975
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www.saul.com

July 18, 2017

Via EEOC Respondent Portal

Briggette K. Woodard, Investigator
Equal Employment Opportunity Commission
Atlanta District Office
100 Alabama Street, SW, Suite 4R30
Atlanta, Georgia 30303

Re: Charging Party: Steven B. Barger
Respondent: First Data Corporation
EEOC Charge No.: 410-2017-02839

Dear Investigator Woodard:

This Firm represents Respondent First Data Corporation (First Data or the Company), the former employer of Charging Party Steven B. Barger. This letter sets forth the Company's Position Statement and Answer to the above-referenced Charge of Discrimination (Charge).

Barger alleges in his Charge that the Company discriminated against him on the basis of a disability and his age in violation of both the Americans with Disabilities Act, as amended (ADA), and the Age Discrimination in Employment Act (ADEA). He also alleges that the Company retaliated against him. First Data denies that it discriminated or retaliated against him on the basis of disability, age, or any other protected classification.

To the contrary, the Company had legitimate, non-discriminatory business reasons for including Barger in a large-scale, company-wide reduction in force (RIF). The deliberations regarding those to be included in the RIF began in late 2016, and the first wave of terminations took place in January 2017. With respect to managerial level employees, the first wave of the RIF impacted two dozen employees at the Senior Vice President (SVP) and Executive Vice President (EVP) level (including Barger), and over 125 members of management. As discussed more fully below, the record shows that the Company believed it did not need an employee at Barger's SVP-level or Barger to continue running the Training Group, particularly when there were issues with his management, leadership of that group, and lack of a succession plan, all of which predated any illness. The evidence is uncontroverted that neither Barger's alleged

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A DELAWARE LIMITED LIABILITY PARTNERSHIP

Briggette K. Woodard, Investigator
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disability, nor age were contributing factors or even considered as part of the calculus for including him in the RIF. The law is clear that being out on medical leave does not shield an employee from being included in a RIF. There is also no evidence that First Data failed to accommodate Barger's medical condition while he was employed. Further, Barger delivered a full and complete physician's release to the Company on January 10, 2017, releasing him to return on January 17, 2017. Accordingly, First Data respectfully requests that a finding of no probable cause issue, that the Charge be dismissed, and this matter be closed.

I. Factual Background

First Data is a financial services company that provides, among other things, credit, debit, check, and electronic payment solutions. The Company offers a suite of systems, services, and products to businesses and financial institutions. First Data is proud of its longstanding commitment to equal employment opportunity (EEO) and its policies strictly prohibit discrimination on the basis of an employee's disability or age or any other protected characteristic. First Data employees may utilize a multi-faceted complaint resolution procedure to raise issues of alleged discrimination, harassment, and retaliation. (*See Exhibit A*). Employees are informed of First Data's EEO policies and procedures and may report discrimination, retaliation, or harassment to anyone in management, to a member of the Human Resources (HR) Department, or by calling First Data's Ethics Hotline. Retaliation for engaging in protected activity is prohibited. (*Id.*).

I.1. Barger's Employment Background with First Data

Barger began his employment with First Data on June 30, 2014, working out of its Atlanta, Georgia offices. Previously, he had provided some consulting services as an independent contractor to First Data. He was 69 years old when the Company hired him. Barger was given the title of SVP, Head of Sales Transformation, and was brought in by the Company to serve largely as a consultant to help lead and guide a sales transformation initiative. As SVP, Head of Sales Transformation, Barger had no direct reports, but rather his job entailed interacting with employees across multiple sales channels. Barger's starting salary was \$480,000, and with his annual bonus and equity awards, his position was a significant expense to the Company.

In August 2014, following the departure of another executive, Barger was assigned to lead the Training Group. The First Data Training Group consisted of Training Specialists who developed and implemented varied sales training programs for new products and services. These employees were located in various locations within and outside the USA. With this assignment, Barger, for the first time since joining First Data, was assigned employees to manage and supervise. For someone at Barger's salary level and title, First Data expected him to take the reins of leadership with the Training Group by working "hands on" with the team to establish concrete goals, objectives, and expectations. Barger's immediate supervisor was Jeffrey Hack, an EVP who in turn reported to Dan Charron, EVP, Head of Global Business Solutions.

Brigette K. Woodard, Investigator
Equal Employment Opportunity Commission
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1.2. Barger's Leadership Issues

Rhonda Johnson, a seasoned VP of HR in Global Business Solutions, was assigned as the HR business partner for the Training Group in August 2015. From early on, Johnson observed major issues with Barger's management style in leading the Training Group:

- His hands-off approach to running the Training Group meant that he did not outline goals or consistent priorities for the group.
- The problems were exacerbated because he was not effectively communicating with the employees who worked day-to-day in the Training Group.
- His lack of attention to detail contributed to poor administration of the Training Group.
- He often kept team members in the office well after normal business hours due to his inability to concisely communicate, which equated to meetings running well over the time initially scheduled.

All of the above contributed to frustration for the Training Group employees who wanted and needed leadership and direction. Some of them complained to Johnson on multiple occasions about Barger's poor management and the impact it was having on the organization. Johnson regularly informed her supervisor, Karen Whalen, an SVP of HR, of the performance issues Barger and his group were experiencing and the complaints she was receiving, noting the "gaping hole" between Barger and his group.

At the time, the Training Group was struggling with an approximately 40% attrition rate, which was not improving despite a clear proposal and agreement between Johnson, Barger, and Barger's Directors with respect to the need to fill open positions. The primary failure of the agreed upon approach to fill the gaps was due to Barger's failure to hold all hiring Directors to the hiring plan, as well as Barger's refusal to hire a possible successor for the Training Group.

1.3. Barger's Inappropriate Conduct

In addition to the management problems outlined above, Barger voluntarily shared with Johnson certain conversations and encounters with employees on the team that he had engaged in during the course of his employment that she considered to be highly inappropriate, offensive, and not in keeping with First Data policy and values. Some examples include Barger:

- Telling one of his employees that she was unlikely to advance in her career because of her weight and the way she dressed.

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- Approaching another employee and telling him that he (Barger) was aware that the employee was an alcoholic, needed help, and took him to a rehabilitation facility.
- Openly revealing and discussing the health conditions of other employees to the rest of the team.

Johnson was shocked by these conversations that Barger was having with employees in the Training Group. She spent hours counseling him as to why such comments and conduct were improper and potentially exposed First Data, and Barger personally, to liability. She was not at all convinced he understood her advice or grasped the gravity of his actions.

As with the management deficiencies, Johnson talked about these interactions with Whalen and she believed that Hack, as Barger's direct supervisor, was also aware. All of these issues with Barger's leadership and performance in his position began, and were known to First Data prior to it becoming aware that he had any health issues.

1.4. Barger's Health Issues

In early 2016, Barger revealed to the Company that he had been diagnosed with throat cancer and described the treatment plan he would be undergoing. Upon learning of his medical condition, Johnson advised Barger of First Data's medical leave policies as she would with any other employee, including the availability of leave under the Family Medical Leave Act (FMLA). Barger categorically rejected any suggestion that he needed medical leave and was emphatic that under no circumstances would he take any time off. He insisted to Johnson and members of his team that he should not be treated any differently while he was undergoing chemotherapy and would continue working the entire time because "work was his life." Barger continued to work during this initial phase of his illness.

While he was receiving treatment, Barger's team continued to struggle under his leadership. As noted above, before his health issues arose, Barger had difficulties with the day-to-day challenges of leading the Training Group; these issues were magnified after Barger insisted that he would continue to work while undergoing treatment. Barger spoke often and explicitly about his health issues to his subordinates to the point that his sharing of the details made them feel uncomfortable. The employees felt bad for Barger and the situation, but nonetheless continued to approach Johnson with their discomfort and concerns about the lack of direction of the Training Group.

In the summer of 2016, Barger's condition worsened, his health started to deteriorate, and he was scheduled for major throat surgery. Before the surgery, he called the Training Group together at a meeting, and once again, was very explicit about the procedure. He also told that group "his life is his work," and even though he was about to have major surgery, he would not be taking any time off to recuperate and he expected to be copied on every email.

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Employees in the Training Group approached Johnson and asked her to speak with Anthony Marino, the EVP of HR, whom they knew was close with Barger because they were concerned about his health. They also expressed how uncomfortable they had been with Barger openly sharing the most intimate details of his medical condition. Moreover, they continued to complain that his management style had not improved and that they were still not receiving the direction they needed, nor the support to prioritize training requests from multiple senior leaders. Again, these were similar complaints that Johnson had received from team members prior to the onset of Barger's illness.

Barger had throat surgery in September 2016. As noted above, he refused to take a leave of absence and insisted that he would work during his recovery. Despite him being out of the office due to the surgery, the Company respected his decision, did not force him to take a leave of absence, and continued to pay him through the regular payroll because he claimed he was working, reading email, and generally doing his job. However, issues presented during this recovery/work period. For instance, on one occasion after the surgery, Barger insisted on participating in a video conference call with the Training Group. After the conference call, the Directors on his team advised Johnson that Barger had appeared on camera bare-chested and that he was confused and incoherent during the call. On other occasions, he also insisted that employees come over to his house during and after work hours, even though they had work to do, and assist him with problems he was having with his computer and connections with the office. He was also copying employees on emails who had no reason to be copied, adding even more confusion as to what was transpiring in the Training Group. He also fell behind on emails so that by the time he responded to the initial email, several more had followed. Employees approached Johnson and asked her to have Marino intervene with Barger and encourage him to take time off to care for himself.

By November, the situation no longer was sustainable and the void in the day-to-day leadership of the Training Group could not continue given the number and scope of projects that the group was working on. During the entire period since Barger's surgery, First Data had been paying his full salary. Marino visited Barger at his home and told him that he needed to go out on leave to recover. On November 16, 2016, Marino sent FMLA paperwork to Barger. Barger had exhausted whatever paid time off he had, so Marino also advised him that the Company would put him on short-term disability so that he could continue to receive some income while he was out on FMLA leave.¹

¹ Based on the date that his physician used in the FMLA certification, Barger's initial leave date was set as October 24, 2016. Subsequently, the Company received other medical documentation from Barger that used September 5, 2016, as the date for leave purposes and when MetLife processed the STD, it confirmed that was the date. For FMLA purposes, Barger's leave date was set as September 5, 2016, so that his FMLA leave would expire on November 28, 2016. After his FMLA leave expired, Barger remained out on ADA leave until January 13, 2017. During the time period while he was out, the Company ended up overpaying Barger, but Marino decided

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1.5. First Data Undergoes a Reduction in Force

Beginning in late November 2016, (while Barger was out on FMLA leave), senior management determined that First Data needed to reduce expenses and significantly improve efficiencies. To achieve these objectives, the decision was made to reduce the workforce. Management decided that highly compensated, management level employees, (Directors, VPs, SVPs, and EVPs), would be included in the initial rounds of review when considering cuts. During this process, the Training Group, like all business units, was examined by the internal consulting team to determine if positions, (including Barger's), could be eliminated to achieve real cost savings. When reviewing Barger's role heading the Training Group, the Company decided that it was unnecessary for an SVP to lead that group and that a VP level employee would suffice and likely do a better job. In considering whether to include Barger in the RIF, the Company also considered the problems he had experienced in trying to run the group, (lack of leadership, direction, goals, poor communication and questionable judgment with respect to interactions with employees), and all which had arisen prior to, and were known by the Company before Barger became ill. Accordingly, it was determined that Barger should be included in the RIF.

Barger was not alone when it came to management being included in the RIF. All told, 23 SVPs, and over 100 Directors and VPs were included in the first wave of the RIF, along with another 190 employees. Barger's supervisor, Hack, an EVP was also terminated as part of the RIF.² Between the two phases of the RIF, (January and March), over 1,000 employees lost their employment with First Data.

On Friday January 13, 2017, Johnson advised Barger that his position as SVP of the Training Group was being eliminated and that he was not alone. During that conversation, Johnson explained the underlying business reasons and rationale for the decision. Marino subsequently followed-up with Barger about the RIF. At no time during any of his discussions with Johnson or Marino did Barger claim that he had been the victim of disability or age discrimination.

In recognition of his service to First Data, his position in the Company, and the fact that his position was being eliminated, First Data offered Barger a far more generous and enhanced severance package than other employees, who received the standard package. First Data's initial offer to Barger was worth several hundred thousand dollars, and although the Company increased the offer several times in an effort to reach an amicable separation, Barger ultimately

that any such overpayment would be forgiven. The Company also processed his bonus without any reduction.

² In addition to Barger, the Company terminated another 10 employees from the Training Group as part of the RIF. The decision was also made not to fill a number of open positions.

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rejected the severance package. Even though he was advised on January 13, 2017, that his employment was ending, First Data postponed his official termination date to February 28, 2017, so that he would vest in another tranche of equity.³

2. *Legal Argument*

Barger alleges in his Charge that by terminating his employment, First Data discriminated against him on the basis of disability and age in violation of the ADA and the ADEA respectively. Barger further claims First Data somehow retaliated against him by not negotiating in good faith. Any claim that First Data unlawfully terminated Barger's employment fails because he cannot establish a *prima facie* claim of discrimination under either the ADA or the ADEA: (1) at no time did First Data fail to accommodate any disability in order to allow Barger to perform the essential functions of his job; and (2) First Data eliminated Barger's position during a RIF, which is a legitimate, non-discriminatory reason for termination. It is also ludicrous to suggest that refusing to pay money demanded by a terminated employee is retaliation under any federal statute.

2.1. *Discrimination Claims*

Both the ADA and the ADEA make it unlawful to discharge an employee because he is a qualified individual with a disability or because of his age. 42 U.S.C. § 12112(a); 29 U.S.C. § 623(a)(1). In a case such as this one, to succeed with an employment discrimination claim, the burden is on Barger to prove that he was terminated by First Data because of a medical disability or age. *See, e.g., Scott v. Shoe Show, Inc.*, 38 F. Supp. 3d 1343, 1359 (N.D. Ga. 2014) (setting forth the standard under the ADA); *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009) (setting forth the standard under the ADEA).

2.1.1. *Failure to Accommodate*

With respect to the ADA, Barger alleges in his Charge that First Data failed to reasonably accommodate his condition by seemingly denying him a leave of absence. First Data does not challenge that Barger's condition likely qualifies as a disability under the ADA because his cancer does impair a major life function of speaking. What the ADA prohibits, however, among other things, is failing to make reasonable accommodations to allow an employee to perform the essential functions of his job. *See* 42 U.S.C. § 12112(b)(5)(a).

³ As noted in the Charge, Barger hired legal counsel following his termination, who demanded unreasonable amounts of money from First Data as severance in exchange for a release of claims. First Data negotiated in good faith in an effort to resolve this matter with a highly compensated employee whose position had been eliminated, but in the end it was unwilling to pay what Barger demanded. The Charge followed.

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There is no evidence that First Data failed to accommodate Barger's medical condition. To the contrary, when Barger was first diagnosed with cancer in February 2016, and started undergoing chemotherapy treatments, he was specifically advised by Johnson about the Company's leave policies, but he rejected the notion of taking leave and time off from work; he expressly stated that he did not want to be treated differently. His unilateral decision not to take leave but work while he was undergoing treatment cannot be a failure to accommodate. *See Wood v. Green*, 323 F.3d 1309, 1314 (11th Cir. 2003) (leave of absence may be a reasonable accommodation under the ADA); *see also Ivey v. First Quality Retail Serv.*, 490 Fed. Appx. 281, 286 (11th Cir. 2012) (employee failed to set forth a reasonable accommodation that would enable her to perform the essential functions of her job, and therefore, was not a qualified individual).

Similarly, after he had surgery in September 2016, he again refused to take any leave but insisted that he keep working because "work was his life." That choice was his, and again, the Company did not force him to take leave until the situation became untenable in November 2016, but continued to pay his full salary and benefits after the surgery believing that he was working. Moreover, since he was not in the office while recovering, the Company tried to help his ability to work by, for instance, retaining his dedicated administrative assistant to solely support him, (even though most administrative assistants in Atlanta are assigned to support multiple leaders), and retaining his access to email and work files, among other things. Only after he started demonstrating troublesome and unacceptable behavior—such as appearing bare-chested on a video call and sending incoherent and inappropriate emails—did the Company insist that he take FMLA leave.

The Charge cites an EEOC ADA Enforcement Guidance to establish that leave is a reasonable accommodation. It is undisputed that First Data never denied Barger the right to take any medically related leave, including a full 12 weeks of FMLA leave. Barger did not ask for, and therefore, First Data did not deny any request for additional leave. To the contrary, Barger asserts that once his FMLA leave was exhausted and after he had been out on extended leave beyond the FMLA leave, he submitted a physician's authorization on January 10, 2017, and was anxious to return to work. However, First Data was not required by the ADA to have guaranteed Barger his job or another job when he, along with many other SVPs, were included for termination in connection with the company-wide reduction in force. *See O'Connor v. PCA Family Health Plan, Inc.*, 200 F.3d 1349, 1354 (11th Cir. 2000) (employer may terminate an employee on FMLA leave as part of a RIF). Similar reasoning applies here.

Barger presents no evidence that First Data decided to include Barger in the RIF because he was disabled or over age 40. At best, Barger seemingly alleges in the Charge that First Data violated the ADA and ADEA by forcing him to use his paid time off and short-term disability (STD) while he was on FMLA leave and after his FMLA was exhausted. What he fails to acknowledge in the Charge is that the Company triggered his leave under the company-funded STD plan so he would continue to receive some compensation after his paid time off was exhausted and after the Company had been paying his straight salary even though he was out.

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Barger further claims First Data discriminated against him by denying him “the right to return” to work after receiving medical clearance without restrictions. Barger’s allegations defy logic, as Barger was granted all the leave he requested and he was cleared to return to work without restrictions. Simply stated, Barger has no evidence that his employment was terminated under circumstances giving rise to an inference of discrimination based on his disability or age.⁴

2.1.2. Termination Due to a Reduction in Force

Not surprisingly, the Charge is completely silent and makes no mention that Barger was not singled out, but that he was lawfully included as part of a RIF that impacted 1,000 First Data employees. To establish a discriminatory discharge claim during a RIF, Barger is required to show that he: (1) was a member of a protected class; (2) was discharged; and (3) was qualified for his own position or to assume another position at the time of his discharge; and (4) some additional evidence that would allow a reasonable fact finder to conclude that First Data intended to discriminate in making the discharge decision. *Benson v. Tocco, Inc.*, 113 F.3d 1203, 1208 (11th Cir. 1997); *see also Maddow v. Procter & Gamble Co.*, 107 F.3d 846, 851 (11th Cir. 1997) (analyzing ADEA claim during RIF). Accordingly, Barger at all times bears the ultimate burden to prove that his position as the SVP of the Training Group was eliminated because he was disabled and/or because he is over the age of 40. Barger simply has not and cannot supply any evidence to support the evidence necessary to prove either of these claims.

Under the test for determining discrimination when the termination is part of a RIF, First Data does not dispute that Barger: (1) has a disability; (2) is age protected; or (3) was subject to an adverse employment action. However, the evidence establishes that Barger was not qualified. Before any evidence that he had developed cancer, the Company became aware of his major deficiencies in managing the Training Group. He had not set goals and objectives for the team and was not providing the hands-on leadership demanded by the role. Moreover, he was inappropriate in the way he handled certain situations with employees by making comments about their appearances, characterizing an employee as being an alcoholic thereby potentially violating the ADA by regarding the employee as disabled, and sharing other employees’ health conditions and his own openly with members of the Training Group and other employees. When it came time to decide if Barger’s position should be included in the RIF, it was determined that the skills needed for the job could be handled by an employee with a lesser title and salary who would not have the same performance issues. That is not discrimination of any kind, but a legitimate business reason for an action. Accordingly, the decision was made to include him in the RIF and offer him a generous severance package.

Assuming, *arguendo*, that Barger can state a *prima facie* case of discrimination under either the ADA or ADEA, the burden of production falls on First Data to establish a legitimate,

⁴ Barger was actually overpaid during his leave period because of certain confusion over when leave began and how he was to be paid. As another demonstration of its good faith, First Data decided to waive any repayment requirement.

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non-discriminatory reason for terminating Barger's employment. Here, the RIF is a legitimate, non-discriminatory reason for termination. All told, First Data eliminated 174 management positions, including other SVPs and also an EVP who was Barger's immediate boss. The RIF resulted in annual salary and fringe benefit savings to First Data in excess of \$43 million dollars. *See Mitchell v. City of LaFayette*, 504 Fed. Appx. 867, 870 (11th Cir. 2013); *see also Quick v. Tripp, Scott, Conklin & Smith, P.A.*, 43 F. Supp. 2d 1357, 1369 (S.D. Fla. 1999) (where the court held that the defendant-employer had established economic and other business reasons that supported its decision to eliminate the plaintiff's job). Further, when considering an ADA claim within the context of a *bona fide* RIF, an employer is not required to "retain the least able [employee] because of a disability." *Matthews v. Commonwealth Edison Co.*, 128 F.3d 1194, 1196 (7th Cir. 1997).

Since First Data has put forth a legitimate, non-discriminatory reason for terminating Barger's employment, he is required to show that this reason was pretext, i.e., not the real reason for the Company's action and that the real reason was impermissible discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993); *Chapman v. AI Transp.*, 229 F.3d 1012, 1046 (11th Cir. 2000); *Maust v. United Parcel Serv. Gen. Servs. Co.*, 897 F. Supp. 2d 1351, 1364 (N.D. Ga. 2012). Barger has not and cannot demonstrate that he was terminated for requesting leave or an accommodation or that his age had anything to do with him being included in the RIF. At best, the only evidence Barger cites is that Marino, the EVP of HR, was executing an "internal corporate land grab," (whatever that is), in order to expand his own personal power and influence. (*See Charge at p. 5*). While First Data rejects any such conjecture that this was the reason that Barger was terminated, this speculation does not prove discriminatory intent. Rather, the only thing such evidence might tend to prove, (if true), is that Marino terminated Barger because he wanted the Training Department under his control. That is altogether different than proving that Marino made the decision to get rid of Barger because he was disabled and/or old.⁵

⁵ There is no basis to support Barger's conjecture. Marino was already an EVP and he had more than eight different areas of responsibility including HR strategy and execution, compensation, benefits, recruitment and staffing, HR Generalist support, rewards and recognition, HR Administration and Operations, payroll, and a training department that handles executive development, company-wide orientation, institutional sales, online learning, and many other training areas. There was no business need for Marino to have wanted to terminate Barger just so he could take over another area. Moreover, any notion that First Data sought to terminate Barger because of his age is also dispelled by the fact that Barger was hired by First Data when he was 69 years old and terminated just 2 ½ years later when he was 72 years old, particularly in situations like this one where he was hired and terminated at the highest level of the Company. *See Williams v. Vitro Servs. Corp.*, 144 F.3d 1438, 1442 (11th Cir. 1998) (pursuant to the same actor inference, where a termination occurs within a relatively short time after a hiring there is a strong inference that age discrimination was not a motivating factor in the employment decision); *Burhmaster v. Overnight Transp. Co.*, 61 F.3d 461, 464 (6th Cir. 1995) (holding that "an individual who is willing to hire and promote a person of a certain class is unlikely to fire

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2.2. Retaliation Claims

The Charge includes a check mark in the box marked "Retaliation." To state a *prima facie* case of retaliation, a plaintiff must offer evidence that: (1) he engaged in a statutorily protected activity; (2) he suffered an adverse employment decision; and (3) the decision was causally related to a protected activity." *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1328 (11th Cir. 1998). Although it is hard to understand from the Charge what conduct Barger claims as evidence of retaliation, he seems to suggest that after he was terminated due to the RIF and offered a severance package, the Company and its counsel retaliated against Barger after his attorney raised claims of discrimination under the ADA, FMLA, and ADEA by not negotiating in good faith to reach a mutual agreement, which also caused Barger's legal costs and expenses to increase. This retaliation claim also must fail.

Barger does not and cannot allege that he engaged in a statutorily protected activity. The items he takes issue with all occurred after he was given notice of termination, (the effective date of which was only delayed so that he could vest in more equity), so the adverse employment action had already happened. Even though First Data does not have to justify its negotiating position over Barger's severance package, it is not unlawful retaliation for an employer to reject an employee's demand for more severance and/or not cower in the face of litigation threats from opposing counsel, especially considering First Data was offering Barger a far greater separation package than he was entitled under Company policy.

3. *First Data's Responses to Barger's Specific Allegations Included in the Charge*

Throughout this Position Statement, First Data has responded to many of the allegations asserted in Barger's Charge. Further responses and clarifications to Barger's specific allegations are provided below. To the extent not expressly admitted herein, First Data denies each and every allegation in the Charge, and denies that it unlawfully discriminated or retaliated against Barger.

Introduction

The written contents on the first page of the Charge are lawyer statements and legal conclusions for which no substantive response is required. To the extent a further answer is

them simply because they are a member of that class"); *Proud v. Stone*, 945 F.2d 796, 797 (4th Cir. 1991) (where "the hirer and the firer are the same individual and the termination of employment occurs within a relatively short time span following the hiring, a strong inference exists that discrimination was not a determining factor for the adverse action taken by the employer").

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warranted, First Data denies any allegations of discrimination or retaliation against Barger on the basis of disability, age, or any other protected classification.

Factual Background – Barger/First Data

First Data admits the allegations set forth in the 1st paragraph of this section.

First Data admits the allegations of the first, third, fourth, and fifth sentences of the 2nd paragraph of this section. First Data denies the remaining allegations set forth in the 2nd paragraph of this section.

First Data is without knowledge or information sufficient to form a belief as to the allegations in the 3rd paragraph of this section, but does not deny that Barger was diagnosed with cancer.

First Data admits that Barger informed Charron and Marino of the circumstances and treatment plan and thus admits the allegations in the 4th paragraph of this section.

First Data admits that Frank Bisignano, Hack, and Johnson became aware of Barger's condition given their respective roles in the Company as alleged in the 5th paragraph of this section. First Data denies the allegation that Hack left the Company prior to the allegations raised in the Charge because both Hack and Barger were included in the RIF.

First Data is without knowledge or information sufficient to form a belief as to the allegations in the 6th paragraph of this section as to Dr. Harrison's opinions, but admits the remaining allegations set forth in the 6th paragraph of this section.

First Data is without knowledge or information sufficient to form a belief as to the exact specifics of the course of Barger's radiation treatment or his exact schedule as alleged in the first and second sentence of the 7th paragraph of this section, but does not deny that Barger underwent treatment during this time period. First Data denies the allegations of the third sentence of the 7th paragraph of this section.

First Data is without knowledge or information sufficient to form a belief as to Barger's exact schedule after the treatment ended as alleged in the 8th paragraph of this section.

First Data is without knowledge or information as to what Barger's physicians advised as alleged in the 9th paragraph of this section, but does not deny that it learned that Barger would need the surgery described.

First Data is without knowledge or information sufficient to form a belief as to the specifics of how his surgery was scheduled as alleged in the 10th paragraph of this section, but admits that Barger was scheduled to have surgery in Florida.

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First Data is without knowledge or information sufficient to form a belief as to his exact work patterns as alleged in the 11th paragraph of this section, but admits that Barger notified management of his surgery and that he continued to work.

First Data is without knowledge or information sufficient to form a belief as to the specifics of the medical procedure that Barger underwent in Florida as alleged in the 12th paragraph of this section, but admits that he had major surgery on his vocal cords.

First Data is without knowledge or information sufficient to form a belief as to the specifics of everything that transpired after Barger's initial surgery and his second surgery as alleged in the 13th paragraph of this section, but does not deny that he had medical complications that required him to be in Florida for an extended time period. By way of further response, First Data states that Barger insisted that he not go out on leave and that First Data continued to pay his regular salary during this time period.

First Data admits that Barger kept management aware of his condition and continued to communicate with members of the Training Group as alleged in the 14th paragraph of this section, but is without knowledge or information sufficient to form a belief as to the allegations regarding him working on First Data business almost every day while he was in Florida.

First Data admits the allegations set forth in the first and second sentences of the 15th paragraph of this section, but denies the remaining allegations set forth in the section. By way of a further response, First Data states that after Barger's surgery, Joe Plumeri, First Data's Vice Chairman and Board Member, decided to visit Barger in Atlanta to see how he was doing and cheer him up. Barger had worked for Plumeri for most of his career. Plumeri chartered a private plane for the visit and he invited Marino to accompany him to visit Barger. Although Barger could not speak, he wrote on his white board that he loved Plumeri and Marino, and that he could not be handling the recovery without them.

First Data denies the allegations in the first sentence of the 16th paragraph of this section that it "moved Mr. Barger onto its short-term disability policy" as stated. Rather, First Data offers short-term disability benefits to employees, which is an employer-funded program. Barger had exhausted his six weeks of paid leave as alleged in the second sentence of the 16th paragraph of this section. By way of further response, by triggering Barger's entitlement to be paid under its STD policy, Barger continued to be paid by the Company while he was on FMLA leave. First Data admits that it approved Barger's request for FMLA leave as alleged in the third sentence of the 16th paragraph of this section.

First Data admits the allegations set forth in the first sentence of the 17th paragraph of this section, but denies the remaining allegations set forth in the 17th paragraph of this section.

First Data, in response to the allegations set forth in the 18th paragraph of this section states that until Barger went out on leave on November 19, 2016, with FMLA leave effective September 5, 2016, he insisted on not taking any leave.

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First Data admits that Barger was on leave recovering from his surgery as alleged in the first sentence of the paragraph of this section, but denies the remaining allegations of the 19th paragraph of this section because his electronic access to the Company was suspended during his leave in accordance with standard procedure.

First Data is without information or knowledge sufficient to form a belief as to the allegations set forth in the 20th paragraph of this section.

First Data admits the allegations set forth in the 21st paragraph of this section.

First Data, in response to the allegations set forth in the 22nd paragraph of this section admits that on January 13, 2017, Johnson, in her role as VP of HR for Global Business Solutions which was the exact same business unit where Barger had been assigned, notified Barger that his position had been eliminated as part of a company-wide RIF, and therefore, his employment was being terminated. She further advised him that he would be eligible for a severance package from the Company. Subsequently, she forwarded to Barger a separation agreement that had significantly greater benefits than would otherwise be available to an employee of his tenure under First Data's standard severance plan.

First Data admits the allegations set forth in the first sentence of the 23rd paragraph of this section. The allegations set forth in the second sentence of the 23rd paragraph of this section state a legal conclusion for which no response is required. To the extent that a further answer is warranted, the allegations are denied on the grounds that First Data had no obligation to restore Barger to a similarly situated position or offer him an alternative position given that he had been terminated pursuant to a RIF.

First Data denies the allegations set forth in the 24th paragraph of this section.

First Data, in response to the allegations in the first sentence of the 25th paragraph of this section, admits that Barger underwent surgery and apparently recovered and that Marino visited him at home in November 2016. First Data denies the remaining allegations set forth in the 25th paragraph of this section.

First Data denies the allegations set forth in the 26th paragraph of this section.

First Data denies the allegations set forth in the 27th paragraph of this section. By way of further response, Marino was already an EVP and had more than eight different areas of responsibility under his leadership. Taking control over Barger's Training Group presented no upside for Marino's career.

First Data denies the allegations set forth in the 28th paragraph of this section.

First Data admits that Barger was ready and willing to return to work on January 17, 2017 (the date his doctor released him), as alleged in the first sentence of the 29th paragraph of

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this section, but is without knowledge or information sufficient to form a belief as to whether he was able. First Data denies the remaining allegations set forth in the 29th paragraph of this section.

Americans with Disabilities Act Charge Against First Data

The allegations in the 1st, 2nd, 3rd, and 4th paragraphs of this section either refer to language contained in statutes or interpretative guidance that either speaks for itself or states a legal conclusion for which no response is required. To the extent a further response is warranted, the allegations are denied.

First Data admits the allegations set forth in the first sentence of the 5th paragraph of this section. First Data denies the allegations set forth in the second sentence of the 5th paragraph of this section. By way of further statement, Barger did receive a letter dated November 19, 2016, but it was later determined that his FMLA leave should have commenced on September 5, 2016 and not on October 24, 2016, thus causing the FMLA leave start date to be off by approximately six weeks. The third sentence of the 5th paragraph of this section states a legal conclusion for which no response is required. To the extent a further response is warranted, the allegations are denied.

The allegations in the 6th paragraph of this section refer to documents that speak for themselves. By way of further response, at the time Marino sent messages to Barger, the RIF decisions had not been made.

To the extent the allegations in the 7th paragraph of this section set forth legal conclusions, no response is required. To the extent that a further response is warranted, the allegations are denied.

First Data admits the allegations set forth in the 8th paragraph of this section with respect to the timing of the physician authorization and presumes that Barger was eager to return to work.

First Data admits the allegations set forth in the first sentence of the 9th paragraph of this section and further states that Johnson told Barger that he was being laid off as part of a company-wide reduction in force. First Data admits the allegations in the second sentence of the 9th paragraph of this section and further states that Johnson and Barger made arrangements for Barger to come into the office to retrieve his personal belongings after regular business hours.

To the extent the allegations in the 10th paragraph of this section set forth legal conclusions, no response is required. To the extent that a further response is warranted, the allegations are denied.

First Data admits the allegations set forth in the first sentence of the 11th paragraph of this section because his position as eliminated during the RIF for reasons have nothing to do with

Brigette K. Woodard, Investigator
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his disability or age. First Data admits the allegations set forth in the second sentence of the 11th paragraph of this section. First Data is without knowledge or information sufficient to form a belief as to the allegations in the third sentence of the 11th paragraph of this section. First Data admits that Barger was terminated due to the RIF, but denies that he did not return to the office or have contact with First Data employees as alleged in the 4th sentence of the 11th paragraph of this section. The allegations of the fifth sentence of the 11th paragraph of this section refer to legal conclusions for which no response is required. To the extent that a further response is warranted, the allegations are denied.

The allegations set forth in the 12th paragraph of this section set forth legal conclusions for which no response is required. To the extent that a further response is warranted, the allegations are denied.

Age Discrimination in Employment Act Charge Against First Data

The allegations in the 1st and 2nd paragraphs of this section either refer to language contained in statutes or interpretative guidance that either speaks for itself or states a legal conclusion for which no response is required. To the extent a further response is warranted, the allegations are denied.

The allegations in the first sentence of the 3rd paragraph of this section refer to a written document that speaks for itself. First Data admits the remaining allegations set forth in the 3rd paragraph of this section.

First Data denies the allegations set forth in the 4th paragraph of this section.

First Data admits that the allegations set forth in the first sentence of the 5th paragraph of this section. First Data denies the allegations set forth in the second sentence of the 5th paragraph of this section that Charron was not within Barger's chain of reporting. First Data further states that Charron was the EVP of Global Business Solutions, the same organization to which Barger had been assigned. First Data admits the allegations in the third sentence of the 5th paragraph of this section that the Company was discussing ways to reduce salary costs across the Company. By way of further response, First Data states that Barger has now admitted that reducing costs is a legitimate business reason for implementing a RIF.

To the extent the allegations in the 6th paragraph of this section refer to written documents, the documents speak for themselves. First Data denies the remaining allegations set forth in the 6th paragraph of this section.

First Data denies the allegations set forth in the 7th paragraph of this section.

Conclusion

First Data denies the allegations set forth in the 1st paragraph of this section.

Briggette K. Woodard, Investigator
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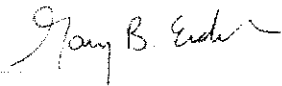
The allegations in the 2nd paragraph of this section either refer to language contained in statutes or interpretative guidance that either speaks for itself or states a legal conclusion for which no response is required. To the extent that the allegations set forth in the 2nd paragraph of this section set forth allegations to which a response is required, they are denied. To the extent any further response is required, First Data denies the allegations.

4. Conclusion

As is evident from the facts discussed throughout this Position Statement, including the legal arguments, Barger's disability and/or age were never factors and played absolutely no role whatsoever with respect to First Data's objective and good faith decision to terminate Barger's employment as part of a RIF. These actions were fair and objective, entirely warranted, and consistent with the ADA and the ADEA. Accordingly, First Data requests that the EEOC close its investigation and dismiss this matter finding that no violation has been established.

The exhibits attached hereto and any supplemental information that may be provided to the EEOC by First Data constitute confidential personnel records and other records of First Data and are included in this response on the assumption that the EEOC will limit its disclosure to its employees as necessary for review of this matter. Thank you in advance for your cooperation in this regard. If you need any further information, please contact me.

Respectfully submitted,



Gary B. Eidelman

Enclosures

cc: Lori Graesser, Esq.
Gillian Cooper, Esq.

EXHIBIT C

THE LAW OFFICE OF SHAWN SHEARER, P.C.

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SHAWN@SHEARERLAW.PRO

August 7, 2017

VIA USPS AND EMAIL (BRIGGETTE.WOODARD@EEOC.GOV)

Brigette K. Woodard, Investigator
Equal Employment Opportunity Commission
Atlanta District Office
100 Alabama Street, SW Suite 4R30
Atlanta, Georgia 30303

**RE: Charging Party: *Steven B. Barger*
 Respondent: *First Data Corporation*
 EEOC Charge No. **410-2017-02839****

Dear Investigator Woodard:

I represent Steve Barger ("Barger") the charging party in the above referenced charge against First Data Corporation ("First Data" or "Respondent"). By letter dated March 2, 2017, received and by the Equal Employment Opportunity Commission (the "Commission") on March 6, 2017, this firm on behalf of Barger charged First Data with discrimination against Barger under the Age Discrimination in Employment Act (29 U.S.C. §621 et seq.) ("ADEA") and the American's with Disabilities Act (42 U.S.C. §12101 et seq.) ("ADA"), including retaliation by First Data against Barger for exercising his rights under the ADA and ADEA. Barger is 72 years old and a cancer survivor. First Data responded to the EEOC Charge by letter dated July 18, 2017 (the "Position Statement"), more than 120 days after the Commission received the Charge,

This letter is Barger's rebuttal to First Data's Position Statement. If additional information is needed for purposes of the Commission's investigation, please let me know and Barger will respond promptly.

A line-by-line response to the Position Statement will not serve any appreciable purpose. The story spun by First Data in the Position Statement is unsupported by the evidence. This rebuttal will concentrate on First Data's contradictions, demonstrable lies, unsupported assertions, and *ex post-facto* recreation of historical events, all of which are nothing more than pretext for what in reality are First Data's violations of the ADA and ADEA, and retaliation for raising these issues while Barger was still employed by First Data.

I. FACTUAL BACKGROUND

The Position Statement admits that Barger was employed by First Data in June 2014 and he was given the title of SVP, Head of Sales Transformation. First Data also states that Barger was initially hired by First Data to lead and guide a sales transformation initiative. The Position Statement also admits that Barger initially did not have any individuals directly reporting to him as SVP, and he initially interacted with a broad scope of employees across multiple sales channels within First Data. [Position Statement page 2]

When Barger was hired in June 2014, First Data was not publically traded, and KKR & Co., L.P. (traded under the New York Stock Exchange under the symbol KKR), owned directly, and through its affiliates, subsidiaries, and managed funds, more than 75% of First Data's outstanding equity interest. Barger was informed, during the negotiation of his possible employment, that First Data was in the process of preparing a \$3.5 billion private equity offering as a precursor to its planned public offering of its equity. As explained to Barger, the public offering would involve KKR selling portions of its holdings to the market to liquidate a portion of its investment in First Data, and that the offering would create a market for the shares issued upon Barger's exercise of his stock options included in his proposed compensation package as an incentive for Barger to join First Data and leave his lucrative consulting business. First Data's officers, employees, and agents represented to Barger that part of his function at First Data would be to assist in transforming the company's sales force and sales philosophy in preparation for private equity offering and subsequent the public offering. This job description was consistent with Barger's long career aiding publically traded financial service companies identify issues, articulate and define policies, and develop their sales forces. First Data's public offering occurred in October 2015.

Barger was hired initially to drive the transformation of First Data's sales programs, changing the sales force from that of a "utility" merely selling processing services into a business consulting, value-added operation. To drive this significant change in the business, Barger started by changing the language of the business introducing carefully defined terms like "genuine concern" and "business consultants" to instill the revised vision across the organization.

From years of experience, Barger knew that a single solution would not fit every customer's need. Barger developed a "business needs analysis" system for the sales force to use in consulting with customers. Barger also developed a robust, proprietary business needs analysis mobile application deployed to the sales force that generated recommendations for clients tailored to the client's specific business needs.

The organization needed a deeper understanding of how they would execute the new shared goal. As part of his initial sales transformation function, Barger implemented a deep training regimen, with activities and training to prepare the sales force to engage First Data clients' differently than they had in the past.

To effectively spread the transformation throughout the company, Barger travelled extensively making presentations to the world-wide sales force outlining the planned transformation of First Data from its low-cost sales philosophy (competing solely on providing a lower price for processing) to a value based philosophy in which the sales force would not only sell processing, but would also use the "business needs analysis" Barger developed to provide First Data's customers with value-added services and benefits to assist the customer's business with data and business advice. These presentations were the initial efforts of the transformation which would require the First Data world-wide sales force to change its mind-set and practices, and require the sales force to take on additional responsibilities and develop additional skills to learn, evaluate, and analyze their customers' businesses. Barger took his message directly to the world-wide sales force and presented it personally in large presentations and break-out working sessions.

After observing Barger's initial performance in developing changes to language and philosophy, developing new business needs analysis concepts and tools, and kicking-off the sales transformation process through presentations and training of the sales force, over the next twelve months, First Data added, and Barger accepted, more and more responsibilities and duties in addition to the sales transformation work he was originally hired to perform.

- In August 2014, First Data requested that Barger head the First Data Training Group. The Training Group consisted of Training Specialists, located on every continent, who developed and implemented sales training programs for new products and services. Barger's immediate supervisor while he was leading the Training Group was Jeffery Hack ("Hack"), First Data EVP, who in turn reported to Dan Charron, EVP Head of Global Solutions ("Charron"). As head of the Training Group, Barger received weekly written progress reports from all of his direct reports, and he held weekly conference calls to discuss issues and obstacles to assist his world-wide team in achieving their objectives. From August 2014 to December 2015, Barger traveled to London twice to meet and conduct multi-day meeting sessions with the Training Group's international team members, and Barger consistently traveled within the US to meet US team members.
- During 2015, Barger assisted all of the "heads of business" (primarily senior vice presidents in charge of various, distinct, business units and segments within First Data) in developing unit business plans, unit intern programs, training curricula for their business areas, assisting individuals in the sales force to prepare business needs analysis for customers, and assisting in developing those leaders' ideas on how to integrate their distinct unit into the overall First Data business plan. Barger's participation in these projects was not within the scope of Barger's original agreement or assignment upon being hired. These requests for Barger's assistance on additional projects reflects First Data's desire for Barger to take-on additional responsibilities, First Data's recognition of the value of Barger's leadership and decades of experience, and Barger's willingness to expand his duties and responsibilities.
- During the 2014 and 2015 process of First Data's private equity offering and the preparation for its October 2015 public offering, in addition to the sales transformation work Barger was originally hired to perform, the additional responsibilities Barger had

agreed to assume heading the Training Group (including the time and travel involved), and Barger's work with heads of business across various company business units (all outlined above), at First Data's request, Barger agreed to undertake additional responsibility to assist the accountants, lawyers, consultants, employees and other professionals in developing descriptions of First Data's sales transformation for use in the business description and forward-looking statements in First Data's securities disclosures and investment road show materials.

- During 2015, Barger developed the "Doctrine of Genuine Concern" to be used as the guiding business philosophy of the First Data global sales enterprise, and this philosophy was discussed by members of management in the equity sale road shows and sales presentations.
- During 2015, in addition to the consulting sales transformation work Barger was originally hired to perform, the additional responsibilities Barger had agreed to assume heading the Training Group (including the time and travel involved), Barger's work with heads of business across various company business units, and Barger's work in connection with the equity offering diligence, preparation, and disclosures (all outlined above), at First Data's request, Barger agreed to undertake a project involving an aggressive schedule of travel across the country to meet with senior leadership (VP level and above in all First Data areas outside of sales) in large ballroom settings for presentations regarding management's vision for the future of the company, the sales transformation processes, the change in culture, and the company's new philosophy, so that the areas outside of sales could provide the needed support to the company's planned evolution. These presentations alone, not including preparation time, consumed approximately 24 days of presentations in approximately 6 cities. Barger was one of four executives selected by First Data to speak at all of these meetings. Participants at these meetings gave Barger outstanding ratings and comments on his performance and presentation.
- In mid-2015, in addition to all responsibilities already assumed by Barger over his first 12 months with First Data (outlined above), Barger was asked by Dan Charron, EVP Head of Global Solutions, to prepare a plan for Barger to consolidate additional areas of the company under his leadership. Charron requested that Barger plan to take on additional responsibilities knowing that Barger had already expanded his duties significantly from the sales force transformation he originally had been hired to perform. Charron's request for Barger to plan for additional duties and responsibilities, shows Charron's confidence in Barger, and Charron's desire to further expand the benefit of Barger's decades of experience and concepts across the company.

In late February 2016, Barger's physicians discovered a nodule on his vocal cord that they suspected to be cancerous. Barger underwent a biopsy and was diagnosed with an invasive form of squamous cell carcinoma on his vocal cords and his physicians recommended radiation treatment.

Barger promptly advised Charron and Anthony Marino, EVP HR ("Marino"), of his cancer diagnoses and his physicians' radiation recommendations. Within days after advising Charron and Marino, the news quickly spread to Frank Bisignano (Chairman & CEO) ("Bisignano") and Rhonda Johnson (VP of HR in Atlanta) ("Johnson") who became aware of Mr. Barger's condition. Bisignano (Chairman and CEO), insisted that Barger receive a second opinion from Dr. Louis Harrison, Chair of the Radiation Oncology Department at Moffitt Cancer Center in Tampa, Florida. Bisignano told Barger that Dr. Harrison was a close friend, Dr. Harrison had effectively treated Bisignano for throat cancer, and Barger should go see Dr. Harrison. Barger traveled from Atlanta to Tampa to be examined by Dr. Harrison as urged by Bisignano. [The facts set forth in this paragraph were admitted in the Position Statement.]

After examining Barger, Dr. Harrison concurred with the diagnoses and radiation treatment recommendation of Barger's Atlanta physicians. From March 28, 2016 through May 5, 2016, Barger underwent 28 separate radiation treatments in Atlanta, receiving five treatments per week for six weeks. During his radiation treatments, Barger maintained his normal work patterns. In the Position Statement, First Data states that during the period of Barger's radiation treatments, Barger "rejected any suggestion that he need to take medical leave" and that during his radiation he "would continue working." Barger did not miss any days of work during his radiation treatments. Barger performed all of the functions of his job (including the expanded responsibilities he had assumed in 2014 and 2015) during the period he received radiation treatments. After completing the radiation treatment regimen, Barger continued his normal work pattern and traveled on First Data business.

In August 2016, Barger returned to his Atlanta physicians for an evaluation of the effectiveness of the radiation treatments. Barger's physicians concluded that the radiation had been ineffective in addressing the cancerous growth on his larynx, and advised Barger that a laryngectomy (surgical removal of the voice box) was required to prevent the spread of carcinoma into his lymph system, which likely would be fatal. Dr. Harrison, whom Bisignano urged Barger to consult, scheduled Barger for laryngectomy surgery by Dr. Tapan Padhya at the Moffitt Cancer Center in Tampa, Florida.

Barger advised Bisignano, Marino, Charron, and Johnson that his laryngectomy surgery was scheduled for Tuesday, September 6, 2016 in Tampa, Florida [Admitted in the Position Statement.] On September 6, 2016, Barger had invasive laryngectomy surgery in Tampa. After experiencing complications and additional surgery in Tampa, Barger returned to Atlanta in mid-October 2016. During his entire time in Tampa, Barger kept First Data's senior management aware of his condition, and he continued to communicate with his team and management at First Data [Admitted in the Position Statement.]

First Data admits in the Position Statement that "after [Barger] had surgery in September 2016, he again refused to take leave, but insisted that he keep working." First Data admits in the Position Statement that Barger's "choice [to refuse leave] was his, and again, [First Data] did not force him to take leave. . ." Barger had more than six weeks of available paid time off covering the period from September 4, 2016 through October 23, 2016 [The facts set forth in this paragraph were admitted in the Position Statement.]

Barger's did not take and was not forced to take leave after surgery. First Data admits and wrote in the Position Statement (second paragraph on page 5):

Despite [Barger] being out of the office due to surgery, [First Data] respected his decision [not to take leave], did not force him to take leave of absence, and continued to pay him through regular payroll . . .

On or about November 3, 2016, just a few weeks after Barger's return to Atlanta from Tampa, Marino (First Data EVP of HR) flew by private jet to Atlanta and visited Barger at his personal residence. At the time of Marino's November 3, 2016 visit to Barger's home, Barger was only 60 days out from major surgery, he was still in the early stages of recovery, he was reliant on a feeding tube, and he was unable to speak except for only a few short quiet statements because of the significant surgical work on his trachea and esophagus. During this meeting Barger spoke the best he could and used a white board to communicate when needed. [The facts set forth in this paragraph were admitted in the Position Statement.]

Marino observed Barger in his condition on November 3, 2016, and has not had in-person contact with Mr. Barger since. First Data admitted in the Position Statement that no employee, officer or director from First Data personally observed Barger between November 3, 2016 and January 10, 2017.

Shortly after Marino's visit to Barger's residence where he observed Barger in his weak condition early in recovery, Marino advised Barger by letter and text messages (attached to the original EEOC Charge letter) that:

- First Data had decided that Barger should be placed on First Data's standard leave;
- Barger's compensation would be moved from regular payroll to First Data's short-term, and then long-term, disability benefits and insurance policies; and
- Barger was to cease working on First Data business and not return to the office while on leave.

Based on the temporal proximity of Marino's visit to Barger's home on November 3rd and First Data forcing Barger to leave status on November 18th, the actions forcing Barger to leave were directly related to Marino's personal observation of Barger's disability. By letter dated November 18, 2016, received by Barger on November 19, 2016 by Fed Ex, stated (emphasis added):

Dear Steve [Barger], . . .

Procedurally, we must now begin to transition you to our standard leave of absence programs. This includes your transition to our short-term disability program. I have included paperwork that you will be required to complete to **begin** this process.

While on short-term disability, your access to work must be curtailed until such time that a doctor medically clears you to return to work. This will provide you with the ability to focus all of your time and attention on your recovery.

Your dedication to First Data is greatly appreciated and we wish you a speedy and successful recovery.

Warm regards,
Anthony Marino
Executive Vice President
Head of Human Resources

The following text message exchange between Barger and Marino (EVP of HR) occurred on November 19, 2016:

Marino to Barger: Later today you will get a fed ex from me that will require you to **begin** disability claims process (short term and then if necessary long term). We've held off on this but now procedurally we are where we are. This will allow you to focus all of your energies on getting better and not be burdened by First Data work. We will announce Robin as the **interim** leader on Monday so your team will have support. We are all praying for your recovery and I personally look forward to our time on the links for years to come. Shoot me a note if you have any questions after you get the fed ex.

Barger to Marino: You are removing me from my job. I am fired?

Marino to Barger: No not fired like any employee required to move to short term disability until your Dr. releases you medically to return to work. When you return your salary restored and you will be given a comparable job. . . .

The "Robin" serving as the hypothetical "interim" leader referenced in Marino's November 19, 2016 text message to Barger is Robin Ording, a First Data VP in HR reporting up through EVP Marino. Robin Ording's age is in her mid-forties. Marino's age is in his early-fifties. [The facts set forth in this paragraph were admitted in the Position Statement.]

Prior to being forced to take leave, as leader of the Training Group, Barger reported to Hack, who in turn reported to Charron, Head of Global Sales Solutions. Robin Ording, "interim" leader upon Barger's leave, reported to Marino, EVP of HR.

Robin Ording replaced Barger in heading the Training Group and has continued in that role through the date hereof providing First Data the same services that were transferred to her from Barger as described in Marino's text message of November 19, 2016. In the Position Statement, First Data admits the EEOC Charge allegation that "As evidenced by Mr. Marino's November 19, 2016 e-mails, Mr. Barger's position was filled on an 'interim' basis by Robin [Ording]." First Data is lying about something, or "interim" must have a completely different meaning to First Data than the normal usage of the word -- meaning temporary. Robin Ording permanently replaced Barger as head of the Training Group, there was nothing "interim" or temporary about it. By definition, the only way Robin Ording could have been the interim leader would have been for Barger to return to his position.

Barger's other duties in addition to heading the Training Group were not addressed by First Data in the Position Statement. Those additional duties must have been transferred elsewhere, or additional personnel hired to undertake those tasks.

After being advised by Marino on November 19th that First Data had decided that Barger must take leave, and Barger received two sets of documents to complete (one set for requesting FMLA leave from First Data, and the other set to be sent to MetLife to request payments from disability insurance), Barger requested his FMLA leave from First Data to begin October 24, 2016.

In an e-mail from Johnson (VP HR in Atlanta) to Barger on December 15, 2016, Johnson wrote:

[First Data's] HR Service Center has advised they received medical documentation from your doctor and **approved your leave request through the 12 week FMLA period ending 1/16/17.** . . .

Action needed: **A Short Term Disability claim has not yet been filed. Therefore, your short term disability pay will not start until a claim is filed with MetLife and the necessary medical information is received by MetLife (not First Data).** Please have your wife contact MetLife and advise that she needs to start a short term disability claim on your behalf.

On December 16, 2016, Barger responded to Johnson by e-mail:

You told me everything was taken care of. Now we have to file with MetLife. Are we going to loose [sic] my coverage of STD?

Later on December 16, 2016, Johnson responded to Barger by e-mail:

Hi Steve, **I was advised all was taken care of from a leave perspective, which is accurate.** [First Data's Human Resources Service Center] advised yesterday that **Short Term Disability is a separate process.** . . .

By letter dated December 15, 2016 (the "FMLA Approval Letter"), a copy of which was attached to the original EEOC Charge letter, First Data approved Barger's request for FMLA leave for the period commencing October 24, 2016 and ending January 16, 2017. The FMLA Approval Letter of December 15, 2016 from First Data to Barger stated (emphasis added):

Dear Steve [Barger]:

Your request for a leave of absence meets the criteria and qualifies as leave under the Family and Medical Leave Act ("FMLA"), and therefore has been approved for the following dates:

Leave Start Date: 10/24/2016
Expected Return to Work Date: 01/16/2017

Your FMLA approved time exhausts on 01/16/2017. . . .

In addition, because your leave request is due to your own serious health condition, the attached Physician's Return to Work form must be completed and sent to Leave Management prior to your return. . .

Sincerely
Leave Management Team
First Data HR Service Center

In the Position Statement (sixth paragraph on page 13), First Data admits and states:

First Data approved Mr. Barger's request for FMLA leave commencing October 24, 2016 with that approved FMLA leave ending January 16, 2017.

On January 10, 2017 each of the following occurred and were admitted in the Position Statement:

- Barger received clearance from his physician to return to work and his physician's office provided a written return to work authorization to Barger (the physician's return to work authorization was attached to the original EEOC Charge;
- Barger delivered a copy of the physician's return to work authorization to Johnson, VP HR in Atlanta; and
- Barger and Johnson agreed that Barger would return to work on Tuesday January 17, 2017, the business day after Barger's approved FMLA leave exhausted on Monday, January 16, 2017 (which was the Martin Luther King holiday).

Barger was ready and willing to return to work as of January 10, 2017. [Admitted in the Position Statement.]

JUST THREE DAYS AFTER BARGER AND JOHNSON (WHO WAS ACTING AS VICE PRESIDENT OF FIRST DATA) PROCESSED BARGER'S RETURN TO WORK AND AGREED TO BARGER'S RETURN TO WORK,

on the afternoon of Friday, January 13, 2017, Johnson, (an officer of First Data and experienced HR professional that had committed on behalf of First Data to Barger's return to work) completely changed her representations and commitments on behalf of First Data, and advised Barger by phone that:

- a. Barger was being terminated by First Data;
- b. Barger's return to work as agreed by Johnson on behalf of First Data on January 10th, was cancelled; and
- c. Barger should not return to the office to work on January 17th as planned. [The facts set forth in this paragraph were admitted in the Position Statement.]

On the January 13, 2017 phone call, Johnson told Barger that the effective date of his termination would be February 28, 2017, but that Barger was instructed not to come into the office at all. [The facts set forth in this paragraph were admitted in the Position Statement.]

During the January 13, 2017 call between Johnson and Barger, Johnson never mentioned a company-wide reduction in force. None of the documents sent to Barger prior to and after the January 13, 2017 call between Johnson and Barger mentioned a company-wide reduction in force.

During the period between January 13, 2017 and February 28, 2017, Barger and First Data, through their counsel, attempted to negotiate a mutually agreed severance agreement. At no time during these severance agreement negotiations did First Data offer to restore Barger to his position, offer to place Barger in an equivalent position, or offer Barger a vacant position of any type.

At no time during the seven weeks of severance agreement negotiations did First Data or its counsel indicate, in writing or verbally, to Barger or his counsel, that Barger's termination was part of a company-wide reduction in force.

Barger's termination from employment by First Data was effective as of February 28, 2017 without a severance agreement or release having been agreed between Barger and First Data. On February 28, 2017, First Data had hundreds of job openings posted advertising available employment opportunities at First Data across the US and in other countries as well.

The Position Statement admits that Barger's cancer is a "disability" for purposes of the ADA. [Position Statement page 7] However, there are two distinct disability events. Barger's cancer is

a "disability" because the major life function of normal cell growth was impaired. Mr. Barger's condition after surgery to remove the cancerous growth was another separate disability event as the recovery and speech prosthetic impaired another major life function, speech.

Mr. Barger remained an employee of First Data until February 28, 2017. The entire time Barger and his counsel attempted to negotiate a severance agreement and release of claims, Barger remained an employee of First Data, and First Data's actions during that time period were all in retaliation against an employee raising legitimate FMLA, ADA and ADEA issues and claims. First Data's negotiating tactics during this period are all subject to review as retaliation against Barger's assertion of his rights as an employee.

First Data's refusal to allow Barger to return to work was a refusal to accommodate Barger's disability and violated the ADA. First Data's continued refusal to accommodate and negotiate in good faith from January 13, 2017 through February 28, 2017 while Barger was still employed was in direct retaliation for Barger raising ADA and ADEA concerns surrounding his termination.

II. PRETEXT

The Position Statement is filled with factually incorrect statements, statements unsupported by documentation, and *ad hominem* attacks on Barger. The Position Statement also is filled with contradictory statements. These falsehoods and contradictions are an attempted *ex post-facto* rewriting of history being used as pretext to justify First Data's violations of the ADA and ADEA outlined in Barger's initial EEOC Charge.

A. CONTRADICTORY AND INCONSISTENT STATEMENTS

There are numerous contradictory and inconsistent statements within the Position Statement. First Data is merely spinning an unbelievable and inconsistent tale to attempt try to cover-up its illegal acts in terminating Barger because of his two disabilities and because of his age.

1. FMLA LEAVE

As outlined above, the only written documents presented to the Commission all show Barger did not take, and was not required to take, leave of absence during radiation, surgery, and recovery until Marino advised Barger on November 19, 2016 that First Data had decided Barger was being forced to take leave. These documents include:

- E-mails from Johnson (VP HR) on December 15 and December 16, 2016 advising Barger that his request for FMLA leave for the period of October 24, 2016 through January 16, 2017 had been approved by First Data and advising Barger that the short-term disability claim process was separate and distinct from the FMLA leave approval process, with the FMLA leave handled by First Data's HR team, and the disability insurance claim process being handled by MetLife.

- The FMLA Leave Approval letter from First Data's Leave Management Team dated December 16, 2016 advising Barger that his FMLA leave was approved for the period October 24, 2016 through January 16, 2017.
- The following statements by First Data in the Position Statement:
 - First Data admits that Barger rejected the notion of his need to take, and did not take, leave during his radiation treatments. [Page 4 of the Position Statement]
 - First Data admits that during surgery and recovery Barger did not take and First Data did not require Barger to take leave. [Page 5 of the Position Statement]
 - First Data admits "On November 16, 2016, Marino sent FMLA paperwork to Barger. Barger had exhausted whatever paid time off he had, so Marino advised him that the Company would put him on short-term disability so that he could continue to receive income while he was on FMLA leave." [Page 5 of the Position Statement]
 - "First Data states that Barger insisted that he not go out on leave and that First Data continued to pay his regular salary [following surgery]." [Page 13 of the Position Statement]
 - In the 16th paragraph of the initial EEOC Charge, Barger alleged that "First Data approved Mr. Barger's request for FMLA leave commencing October 24, 2016 with that approved FMLA leave ending January 16, 2017." On page 13 of the Position Statement - "First Data admits that it approved Barger's request for FMLA leave as alleged in the third sentence of the 16th paragraph of the [Factual Background section of the initial EEOC Charge]."

First Data then relegates to a footnote its weak attempt to re-write history to overcome this overwhelming documentation written by officers and agents of First Data contemporaneously with the events. In footnote 1 of the Position Statement, First Data for the first time in any written document, asserts that it has now retroactively (after Barger had been terminated) changed Barger's FMLA leave to the period of September 5, 2016 through November 28, 2016. This statement in footnote 1 is in complete contravention of First Data's statements in all of the documentation sent by First Data to Barger in November and December 2016 by experienced HR professionals indicating that Barger's FMLA leave was approved by First Data's Leave Management Team and Human Resources Service Center for the period October 24, 2016 to January 16, 2017.

There is absolutely no documentary evidence to support First Data's revision of history contained in the Position Statement. First Data's Position Statement simply is an exercise in First Data *ex post-facto* (well after Barger had been terminated) trying to justify termination of Barger to avoid the clear ADA and ADEA claims raised by Barger in the EEOC Charge. All of the written documentation provided to the Commission were created by First Data contemporaneously with the events.

First Data cannot even keep its own story straight. Barger never took leave and was not required to take leave during radiation and surgery. Barger was informed by Marino that First Data had decided that Barger needed to be moved to leave. Barger did not receive the forms to complete

requesting FMLA leave until after November 19th. Now, First Data is trying to claim Barger's FMLA leave expired just days later on November 28, 2016, and weeks before his leave request was even approved by First Data Human Resources.

As even further evidence of this pretext, on December 15th and 16th VP Johnson and the HR Leave Management team advised Barger that his FMLA leave was approved. First Data is now trying to say that Barger's FMLA leave actually expired on November 28th, more than two weeks prior to First Data even approving FMLA leave. First Data's position strains credulity.

All of the documentation indicates Barger's FMLA approved leave was for the period October 24, 2016 through January 16, 2017. Barger never was on leave as an accommodation for his disability in excess of his FMLA leave. Leave as an accommodation cannot be an undue hardship when it is statutorily mandated under the FMLA. Under the FMLA and ADA, Barger's position should not have been permanently transferred to Robin Ording as FMLA leave is legally required, and a form of accommodation under the ADA that cannot be an undue hardship when such leave is statutorily mandated in the FMLA. Failure to permit Barger to return to his position constituted a failure to follow-through to complete the accommodation of Barger's disability.

All of the written evidence created contemporaneously with events shows Barger did not take leave until Marino forced him to do so. To now re-write events to say Barger's FMLA leave (which First Data admits he never took) ended just 9 days after Barger was told to take leave simply demonstrates how far First Data will go to try to conjure a pre-textual explanation for Barger's termination.

All of First Data's excuses for their discriminatory behavior in the Position Statement should be read with an understanding that First Data is willing to make such nonsensical, impossible, and false statements to avoid liability.

First Data's refusal to allow Barger to return at the end of his approved FMLA leave on January 17, 2017, is a failure by First Data to accommodate as required by the ADA.

First Data prematurely transferred Barger's responsibility for the Training Group to Robin Ording while Barger was on protected FMLA leave. The transfer was on a permanent basis, not an interim basis as represented by Marino. When Barger had the audacity not to die or retire, and he provided his return to work authorization and set a return to work date, just three days later, First Data terminated him. First Data never accommodated Barger's disability.

Before Barger's diagnoses, treatment and surgery, from his date of hire through February 2016, First Data expanded Barger's duties and responsibilities. When Barger became disabled and then was cleared to return to work, First Data terminated him. First Data never engaged in the interactive process for Barger's return to work after surgery and cancer (both disabilities). First Data terminated Barger because he was now a disabled 72 year-old. First Data violated the ADA and ADEA.

2. Filling of Open Position v. Reduction-in-Force

In its Position Statement, First Data states that Johnson was not assigned to the Global Business Solutions group until August of 2015 (more than a year after Barger was hired and just 6-months prior to Barger's diagnoses). In the Position Statement, First Data cites the attrition rate in the Training Group and an agreement between Johnson, Barger, and Barger's direct reports to fill open positions in the Training Group. This "agreement" could not have been entered until after Johnson's arrival in the group in August 2015 and Barger and his direct reports would have needed time to implement the plan. First Data presents no written record or evidence that this "agreement" really existed at all.

Barger's "failure" to implement the "plan" for filling open positions as supposedly "agreed" is used by First Data to justify poor performance by Barger. But then, as justification for his termination, First Data points to an alleged reduction-in-force to reduce costs. First Data even notes in the Position Statement (footnote 2) that the company terminated another 10 employees in the Training Group and "a decision was also made not to fill a number of positions."

First Data is talking out of both sides of its mouth. On one hand, Barger is accused of poor performance for not filling open positions in the Training Group. On the other hand, First Data is lauding itself for cost-controls implemented by terminating Training Group employees and deciding not to fill open positions. The inconsistencies are obvious and First Data's story makes no sense. First Data's position is that Barger's performance was deficient because he should have filled positions just so those hires could be terminated months later. If cost controls and refusal to fill open positions was a good decision for First Data, the exact same decision by Barger cannot be used as a performance deficiency. In fact, by First Data's own definition, Barger's decision was good management of Barger's labor cost budget.

3. Performance Criticism v. Insufficient Information to Admit or Deny

The Position Statement alleges some performance related issues of which First Data alleges it had become aware before Barger's disability, diagnoses and treatment. Barger disagrees that these issues exist. But, even if they did, if the performance issues justified termination, First Data did not terminate Barger while he was healthy. First Data only relied upon these issues for termination after Barger became disabled and was ready to return to work. The very definition of pretext.

First Data did not document the alleged performance issues in written reports or have any documented discussions with Barger regarding the alleged performance issues.

Again, First Data talks out of both sides of its mouth. On one hand, First Data claims Barger had performance and leadership issues. On the other hand, in the Position Statement, First Data then states:

- "First Data is without knowledge or information sufficient to form a belief as to . . . [Barger's] exact schedule [during his radiation treatments from March 2016 to May

- 2016].” (page 12)
- “First Data is without knowledge or information sufficient to form a belief as to Barger’s exact schedule after treatment ended.” (page 12)
 - First Data “is without knowledge or information sufficient to form a belief as to the allegations regarding [Barger] working on First Data business almost every day while he was in Florida.” (page 13)

How can First Data be monitoring Barger’s performance and at the same time lack any information to even form a belief as to his work as asserted in the initial EEOC Charge? First Data can’t! First Data is fabricating excuses for discriminatory behavior.

Ms. Johnson’s observations of Barger, and undocumented hearsay statements to Johnson by unidentified individuals, are the entire basis of the performance criticisms set forth in the Position Statement. Johnson was not part of the Global Business Solutions team until August 2015. During the period from August 2015 to October 2015, senior management across the company, including Barger, had responsibilities related to the First Data public offering. Johnson’s initial observations of Barger occurred during this period when additional burdens were being placed on senior management outside of their normal job duties. Just three months after the October equity offering (with the holidays between) Barger was diagnosed with cancer in February 2016, underwent radiation from March 2016 to May 2016, and underwent surgery in September 2016. Johnson had no extended time ever observing Barger under normal circumstances, and a significant majority of her observations were during Barger’s radiation treatments.

As set forth in the Position Statement, First Data does not have knowledge or information to form a belief as to Barger’s work patterns from March 2016 through his termination. Yet Johnson’s undocumented observations are somehow presented as justifications for termination.

First Data’s performance justifications are nothing more than pretext. First Data does not have any documentation of Barger’s performance and clearly states that is the case in their Position Statement. Johnson’s anecdotes and hearsay statements are just that. In fact, those anecdotes were determined by First Data’s counsel to constitute insufficient knowledge and information to make any admission or denial regarding Barger’s work from February 2016 to February 2017.

The post-termination pretext is obvious. See also, the discussion of the performance issue as pretext below in subsection C.

4. Proclamation of Policy v. Hostility to Disability and Lack of Information on Disability

In the Position Statement First Data claims to be proud of its long standing commitment to equal employment opportunity and lauds its policies “strictly” prohibiting discrimination on the basis of an employee’s disability or age or other protected characteristic, and prohibiting retaliation for protected activity. (Position Statement page 2)

After making these self-laudatory statements, the Position Statement then goes on to demonstrate First Data's disdain for employees with disabilities being in the presence of other employees. According to First Data's Position Statement, Barger is criticized for merely speaking about his disability with co-workers:

- "Barger spoke often and explicitly about his health issues to his subordinates to the point that his sharing of the details made them feel uncomfortable." (Position Statement page 4)
- "Before surgery, [Barger] called the Training Group together at a meeting, and once again, was very explicit about the procedure." (Position Statement page 4)
- Employees in the Training Group came to Johnson and "expressed how uncomfortable they had been with Barger sharing intimate details of his medical condition." (Position Statement page 5)¹

Nothing prohibits Barger advising the employees under his leadership of what to expect while he was undergoing cancer treatment. First Data's characterization of these conversations as "intimate" is intentionally misleading. The details of radiation therapy to the throat and Barger's surgery are not lewd or offensive, and are not personal to Barger but merely a technical description of procedures that can be located on WebMD. Barger's discussion of his condition and treatment with his team only included technical information that that his team knew what to expect during his treatments and recovery. Barger's job was to keep his team informed about any events that would impact their performance. Just because the issue involved was a disability does not mean the team should not be informed.

Johnson should have informed and counseled these unnamed employees (who allegedly came to her to discuss their "discomfort") about First Data's self-lauded inclusive policies and tolerance for disabilities, the requirements of the ADA, and the need to be inclusive of those with disabilities as set forth in First Data's policies. Instead, First Data terminated Barger and now comes to the Commission and states that because Barger was talking to his co-workers about his disability, First Data was justified in terminating him. This position is ludicrous. Would First Data make such statements about an employee discussing the difficulties that employee faced as a member of a race? The answer is No! It shouldn't have been done here with respect to a disability either. It was Ms. Johnson's job to counsel any employees that were creating an atmosphere of hostility to disabilities and that they needed to make adjustments to comply with First Data's policies and the laws. Ms. Johnson forfeited a teaching moment, and instead First Data terminated the victim.

First Data's Position Statement makes clear that those with a disability can only be employed by First Data if they keep quiet and do not talk about their disability with co-workers. In First Data's mind, reflected in the Position Statement, if an employee talks about their disability, it is cause

¹ Barger's supposed explicit discussion of his health condition clearly were not that pervasive because First Data continually refers to Barger's "Chemotherapy" treatments (page 4 and 8 of Position Statement). Barger never received chemotherapy treatments. So, either First Data was not paying attention to the supposed offensive and troublesome conversations or those conversations did not occur and First Data is creating facts out of whole cloth.

for termination because that discussion of disability allegedly makes other employees “uncomfortable.” The view of First Data is 180 degrees opposite of the purposes of the ADA to create non-discriminatory environments and to overcome stereotypes of those with disabilities.

First Data’s Position Statement reflects an unabashed intolerance for employees that are ill and dealing with disabilities. Apparently, Mr. Barger was not allowed to discuss his disability and proposed treatment with his team. The hostility of this environment is obvious to any outside observer. First Data, despite their declared policy, takes the position that if you have a disability, don’t talk about it or you will be justifiably terminated. This is prohibited under the ADA.

These statements by First Data also show that First Data does not want sick or disabled individuals in their presence at work. Barger was terminated because First Data did not want an individual with a disability in their offices. When Barger provided his return to work authorization, First Data responded by telling him not to come into the office or talk to his team, and terminated him, because First Data cannot tolerate a disabled person, age 72, in the office. First Data rather would have healthy younger workers without the distraction of old cancer survivors that make the young, healthy employees “uncomfortable” by the simple discussion of a disability.

First Data’s attitude toward disabilities is outrageous, completely inconsistent with First Data’s declared policies, and illegal under the ADA.

B. REDUCTION-IN-FORCE PRETEXT

Any attempt to justify Barger’s termination as part of a company-wide reduction-in-force (“RIF”) is pretext and an *ex post-facto* re-writing of history to try to defend First Data’s illegal termination based on Barger exercising his protected right to return from leave, the failure to restore him to his position, and the failure to even offer him an alternative position (even while First Data stated all that was needed was a VP instead of a SVP in the position and hundreds of open positions were being advertised).

- On November 19, 2016, Marino’s text messages indicate Barger would be returned to his position after recovery – no RIF involving Barger was in the works, or Marino lied to Barger.
- On January 10, 2017, when Barger provided Johnson his return to work authorization, and Barger and Johnson agreed Barger would return to work on January 17, 2017, Johnson (VP of HR) was not aware of a RIF involving Barger because she agreed with Barger as to his return to work.
- On the January 13, 2017 phone call between Johnson and Barger, Johnson did not indicate that Barger was being terminated as part of a RIF.
- In the letter and documents received by Barger on January 13, 2017, Johnson did not indicate Barger was being terminated as part of a RIF.

- From January 13, 2017 through February 28, 2017, and for months thereafter, First Data's counsel (both in-house and outside) communicated numerous times in writing regarding Barger's termination, and not once in those writings (or even the conversations between counsel) was a company-wide RIF ever mentioned as the reason for Barger's termination.
- At no time during the attempted negotiation of a severance agreement and potential release of claims between First Data's and Barger's counsel in January and February 2017 did First Data or First Data's counsel ever refer to a RIF as a potential defense to the FMLA, ADA, and ADEA claims being raised by Barger.

First Data has no documents created between November 19, 2016 and January 13, 2017 that indicate that Barger was part of a company-wide RIF. Johnson (as described by First Data, a VP of HR with significant HR experience) did not know of a RIF on January 10, 2017 when she arranged for Barger's return to work.

First Data was completely fine with Barger being on leave away from the office collecting disability payments. Barger obtained his doctor's clearance to work, and set a return to work date (none of which First Data assumed would occur or anticipated). First Data then terminated Barger and told him to stay away from the office. The temporal proximity of events makes the connection obvious. Three days after agreeing to a return to work date, Barger was terminated even though he had not been terminated throughout his entire cancer radiation and surgery ordeal. Barger was fired because he exercised his right to return to work. First Data simply did not want an old, disabled employee in the office.

Any attempt to include Barger as part of a subsequent RIF is disingenuous and pre-text to cover illegal acts. It was not until Barger decided to return that First Data decided to terminate him. First Data is now retroactively trying to include Barger in a RIF he was not originally included in because First Data was content to allow Barger to remain on long-term disability and First Data believed he would die or retire rather than return to work. Only after Barger indicated he would return did First Data have issues because they had already permanently moved his leadership of the Training Group to a younger employee and they did not want to undo those actions to accommodate the return of a 72 year-old cancer survivor just recovered from major surgery, even though First Data was legally required to do so. The Position Statement was the first time since Barger's notice of termination more than six-months earlier that First Data ever referred to a RIF. First Data has presented no evidence of a RIF involving Barger. The RIF is not a believable justification. The RIF is only after-the-fact outside counsel spinning to create a possible excuse, with no evidence of a RIF involving Barger ever presented, to try to find a defense, any possible defense, to the illegal termination of Barger.

C. PERFORMANCE ISSUE PRETEXT

First Data's attempt to point to performance issues as justification for the termination of Barger are again *ex post-facto* re-writing of history to try to defend First Data's illegal termination.

All of the performance issues raised in the Position Statement are based upon the observations of Johnson and statements to Johnson by unnamed sources. It is important to remember that Johnson was not assigned as the business partner to the Global Business Solutions until August 2015. Johnson was not observing Barger for the 15 months from his hiring in June 2014 and her arrival in August 2015. During this time, Barger was involved with senior management on the equity offering. Further, Barger was diagnosed with cancer in early February 2016, meaning Johnson had less than four months to observe Barger while he was not undergoing cancer treatments. Johnson also was not aware of all the additional duties and responsibilities Barger had taken-on during 2014 and 2015 before she arrived. First Data, relying on Johnson's unsubstantiated and conjured recollection of hearsay events, as justification for performance related termination is again nothing but factually unsupported pretext for keeping a disabled individual from returning to work after FMLA leave.

As outlined above, Barger assumed significant duties and responsibilities over his first 12 months of employment. In mid-2015, Barger was also asked by Charron (EVP, Head of Global Business Solutions) to prepare a plan for taking on additional responsibilities for other areas of the company. These are not the actions of management that lacked confidence in Barger's performance and abilities. In fact, these actions show management had confidence in Barger's abilities and were seeking to spread his experience and knowledge across a broader segment of the First Data system.

Barger's immediate supervisor while he was leading the Training Group was Jeffery Hack ("Hack"), First Data EVP, who in turn reported to Charron. [Admitted in the Position Statement.]

First Data and its HR group/department/function maintains a documented policy and system for (i) employees to receive from their direct superior/supervisor periodic written performance reviews, and (ii) for periodic meetings to occur between superior/supervisor and subordinate to discuss performance reviews, subordinate performance issues, and subordinate career development.

During Barger's entire tenure at First Data, Barger never received a written performance review from Hack, Charron, or any other First Data employee, officer or agent.

During Barger's entire tenure at First Data, Barger was not asked to attend a personal performance review meeting with Hack, Charron, or any other First Data employee, officer or agent, to discuss a written performance review.

The Position Statement never references Barger receiving a written performance review, or any performance review meeting between Barger and his superior, under the First Data's HR processes and procedures.

The Position Statement never references any documentation of Barger's performance issues. First Data did not create any contemporaneous documentation of Barger's alleged performance issues. First Data has never provided Barger any documentation reflecting any of the

performance related issues set forth in the Position Statement. First Data did not provide the Commission any evidence of the documentation of any of the performance issues set forth in the Position Statement. Barger's counsel has requested Barger's personnel files and First Data has failed to produce anything documenting the alleged performance deficiencies. First Data and its counsel are simply making-up performance problems based on Johnson's inflammatory, hearsay based, undocumented, ad hominem attacks on Barger. The "performance issues" are all fabricated with no substance or documentary support.

In mid-2016, Barger learned that HR had engaged a consultant that was conducting what is known as "360 degree" review of personal in another First Data department, and on his own volition, Barger requested that he also be personally evaluated using the same "360 degree" process.

During a "360 degree" review, the HR department and the engaged HR consultant collect information from the participant (in this case Barger), the participant's direct reports, the participant's supervisor (in this case, Hack), and designated peers of the participant, and then the consultant aggregates the responses and issues a report of the results. In the fourth quarter of 2016, Barger received a copy of the "360 degree" report prepared by the consultants from the process earlier in the year, which included the performance review of his direct supervisor at the time. No one at First Data, ever asked or requested to discuss the "360 degree" report he received.

In the "360 degree" report, Barger received an overall leadership rating (a combination of all the scores across all the competencies evaluated in the review) from his manager, EVP Hack, of 4.5 out of a 5 point scale, placing Barger in the top 10% of all leaders, including those outside of First Data, evaluated using this review system.

The only documents addressing Barger's performance show that Barger was respected, asked to take on more and more responsibilities, and provided excellent leadership. Barger was never counseled for performance issues. First Data never documented any performance issues.

First Data is making-up facts.

The *ad hominem* statements contained on page 3 and 4 of the Position Statement do not even justify a response. The evidence in Barger's possession will show that not only are these statements false and created by Johnson solely for purposes of creating a pretextual justification to fend off Barger's complaints, but that the individuals involved are grateful for Barger's caring and assistance.

In his effort to seek replacement employment following his termination by First Data, Barger has amassed numerous recommendation letters from superiors, colleagues, and those that were under his leadership at First Data. The statements by these individuals regarding Barger's performance, caring and leadership do not at all reflect the characterization of Barger in the Position Statement relying only upon Johnson's hearsay recollections of conversations with unnamed individuals.

Moreover, the continual addition of duties and responsibilities to Barger over his first year with First Data, and Charron's request for Barger to prepare a plan to take on additional duties, show significant confidence in Barger's abilities and leadership, and are all completely inconsistent with Johnson's fabricated, undocumented, and concocted critique of Barger's performance (especially given Johnson is an HR professional with no training or experience in leading sales force transformations like that experience Barger developed over more than four decades of doing exactly what he had been hired to do at First Data).

First Data's statement that Johnson "spent hours" counseling Barger is an outright lie and fabrication.

First Data's statement on page 4 that Johnson "believed" Hack was aware of Barger's purported performance issues is a dead giveaway of the pretextual nature of the performance issues raised by First Data. If First Data HR had been properly documenting performance issues and following their policies, First Data would not "believe" Barger's supervisor, Jeff Hack, was aware. Rather, if the proper documentation was in place and proper procedures followed, Johnson and First Data would know Hack was aware. The difference between "believing" Hack was aware and "knowing" Hack was aware is significant. Choosing to state Johnson "believed" Hack was aware means Johnson, Whalen and Marino never told Hack through a documented HR process that there were performance issues (most likely because there were not performance issues and these "performance issues" are fabrications). In a report dated September 23, 2016 (just three months prior to Barger's termination), Hack provided an outstanding review of Barger's performance in his "360 degree" review, and there was no mention of performance issues at all in Hack's evaluation, and no mention of "performance issues" such as those outlined by First Data in the Position Statement based solely on Johnson's recollection of conversations with unnamed individuals.

From Barger's hiring in June 2014 through his diagnoses with cancer in February 2016, First Data expanded Barger's duties and responsibilities - not the acts of a company that believe their Senior Vice President is incapable and having performance issues. It was only after Barger became disabled that First Data created undocumented performance issues. These "performance issues" are nothing more than unsupportable lies being thrown out by First Data HR as pretextual justification for the company's violations of the ADA and ADEA.

Given the severity and egregiousness of First Data's violations excluding a 72-year old, disable, cancer survivor to return to work at the end of his FMLA leave approved by First Data's human resources department, I request that the Commission issue a right-to-sue letter as quickly as possible. It appears that the cancer is gone, but it has been less than a year since his surgery, and there can be no guarantees as to his future condition. The quicker that we may move to protect his rights and litigate his claims, the better. Delays in the administrative process could significantly impact his ability to recover for the unlawful discrimination he has suffered.

I can be reached at (214) 434-1594 if you have any questions or require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn E. Shearer", with a long horizontal flourish extending to the right.

Shawn E. Shearer

cc: Steve Barger

EXHIBIT D

First Data

November 18, 2016

Steve Barger
95 Tamarisk Drive
Atlanta, GA 30342

Dear Steve,

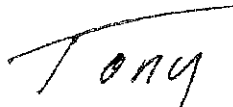
It was wonderful to get to spend some time with you and thoughtful of Joe to include me in our trip to Atlanta.

Procedurally, we must now begin to transition you to our standard leave of absence programs. This includes your transition to our short-term disability program. I have included paperwork that you will be required to complete to begin this process.

While on short-term disability, your access to work must be curtailed until such time that a doctor medically clears you to return to work. This will provide you with the ability to focus all of your time and attention on your recovery.

Your dedication to First Data is greatly appreciated and we wish you a speedy and successful recovery.

Warm regards,

A handwritten signature in black ink that reads "Tony". The signature is stylized with a long horizontal stroke at the top and a loop at the bottom.

Anthony S. Marino
Executive Vice President
Head of Human Resources

Leave of Absence Overview:

Your leave qualifies under the Family and Medical Leave Act ("FMLA") provided your physician fills out the Certification of Health Care Provider included in this letter. You are also eligible to apply for short term disability benefits, if you complete and return the enclosed MetLife Authorization Form to Rhonda Johnson (404-890-2406), via the prepaid self-addressed envelope. Rhonda will forward the forms to the Leave Management Team Office at HR Service Center, Attn: Leave Management, 7301 Pacific Street A19, Omaha, NE 68114 (Contact number: 1-866-620-8941)

Enclosed documents include:

- **MetLife Authorization Form** – authorization to MetLife to begin the short-term disability review
- **Certification of Health Care Provider** – application for FMLA leave of absence
- **Physician's Return to work Form** – for your return to work at the conclusion of your leave

Beginning today through the 14 calendar days of short-term disability application, First Data will continue to pay your regular salary. Once the MetLife Authorization form is submitted and approved, Short-Term Disability (STD) benefits will begin. STD is paid at 66 2/3% of your base pay and is available for up to 90 days. If you are not released to return to work at the end of the STD period, MetLife will review the physician information provided and determine if you are eligible for Long Term Disability (LTD). If approved for LTD, pay will be at 50% of your benefits salary, up to a maximum monthly benefit of \$15,000 until you are released to return to work or a maximum of 12 months, whichever occurs first.

Please notify Rhonda Johnson if there is anything we can do to assist you through this process.

Rhonda.Johnson@firstdata.com
404-890-2406

You may also contact our Leave Management Team directly via 1-866-620-8941.

EXHIBIT E

Messages with (917) 780-5442 (+19177805442)

Thanks for the wonderful visit. Personal things are the only ones that count. Going in for additional repair surgery next week. 8 days in hospital. 4 weeks full recovery. Should be taking around Christmas time. I could play santa. At office party. No plans canceled. Love you both.

Tony here is a kind note from M who delivers training in APAC. up till recently he has been by himself. A quick acknowledgement from you would mean everything. Thank

"You have a big hand in my transformation so I owe it to you. I am on a 12-14 hour shift everyday to help people do well here and I will try my best to."

One more operation soon and I'll have the open internal wounds healed and we can start eating and drinking again. Thanks for being in my life Tony. It means everything.
Love Steve

Coach, Later today you will get a fed ex from me that will require you to begin the disability claims process (short term and then if necessary long term). We've held off on this but now procedurally we are where we are. This will allow you to focus all energies on getting better and not be burdened by First Data work. We will announce Robin as the interim leader on Monday so your team will have support. We are all praying for your recovery and I personally look forward to our time on the links for years to come. Shoot me a note if you have any questions after you get the fed ex.

You are removing me from my job. I'm fired?

No not fired like any employee required to move to short term disability until your Dr. releases you medically to return to work. When you return your salary restored and you will be given a comparable job. We've held off on this as long as we could.

What will this do to my salary and bonus?

No impact on bonus. Salary will be reduced once your paper work is submitted.

Reduce to what?

Doubling checking with Stephanie be back to you just as soon as she verifies.

STD --- 66and2/3rds of Base Salary, No Cap, up to 6months
LTD --- 50 percent of Base Salary with a cap of \$10,000 a month.
If you purchased Voluntary LTD, 60 percent of Base Salary with a cap of \$15,000 per month.

Correction Steve, STD runs for 3mos after you've enrolled not 6mos.

So does this mean I can't go to work and have meetings.

Yes this means you need to shut down for a little while...you will fully concentrate on getting strong and be back soon.

EXHIBIT F

From: Johnson, Rhonda J. <Rhonda.Johnson@firstdata.com>

Sent: Friday, December 16, 2016 11:39:39 AM

To: Steve Barger

Subject: RE: Action for Short Term Leave

Hi Steve,

I was advised all was taken care of from a leave perspective, which is accurate. HRSC advised yesterday that Short Term Disability is a separate process and you will not lose STD coverage, but your wife would need to contact MetLife for them to process and ask if they can back date it or if they need anything from FD or your Doctor to retro the STD date to be in line with your "Leave of Absence" with FD.

Let me know if we need to have the HR Service Center speak with your wife after she calls MetLife and I'll obtain a contact so your wife does not have to call into FD's toll free #. (I'll ensure she has a rep who knows the history and can speak with her directly, if needed, after she contacts MetLife.) MetLife can be reached at 1-877-MET-4FDC

From: Steve Barger [mailto:steve@thebargergroup.com]

Sent: Friday, December 16, 2016 4:00 AM

To: Johnson, Rhonda J.

Subject: Re: Action for Short Term Leave

You told me everything was taken care of. Now we have to file with MetLife. Are we going to lose my

coverage of STD?

Get Outlook for iOS

From: Johnson, Rhonda J. <Rhonda.Johnson@firstdata.com>

Sent: Thursday, December 15, 2016 8:06:36 PM

To: Steve Barger

Subject: Action for Short Term Leave

Hi Steve,

The HR Service Center has advised they received the medical documentation from your doctor and approved your leave request through the 12 week FMLA period ending 1/16/17.

They will request the additional time needed from the business as the 12 weeks of FMLA draws to an end.

A letter has been sent to your home with details and a number for the HR Service Center and Leave Of Absence team, should you/your wife have specific questions.

HR Service Center – 1-888-348-4835

Action needed:

A Short Term Disability claim has not yet been filed. Therefore, your short term disability pay

will not start until a claim is filed with MetLife and the necessary medical information is received by MetLife (not FD).

Please have your wife contact MetLife and advise that she needs to start a short term disability claim on your behalf. MetLife can be reached at 1-877-MET-4FDC.

Thank you.

The information in this message may be proprietary and/or confidential, and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify First Data immediately by replying to this message and deleting it from your computer.

EXHIBIT G

First Data

7301 Pacific Street A19
Omaha, NE 68114-5447

12/15/2016

Steve Barger
95 Tamarisk Drive
Atlanta, GA 30342

Dear Steve:

Your request for a leave of absence meets the criteria and qualifies as a leave under the Family and Medical Leave Act ("FMLA"), and therefore has been approved for the following dates:

Leave Start Date: 10/24/2016
Expected Return to Work Date: 01/16/2017

***Your FMLA approved time exhausts on 01/16/2017. A request will be sent to your business unit to determine approval of additional time.**

Reminder: If you have not yet spoken with a MetLife representative regarding short-term disability (STD), please contact MetLife directly at 1-877-MET-4FDC (1-877-638-4332) Monday through Friday from 8 a.m. to 8 p.m. eastern time to begin this process. Failure to contact MetLife to initiate the short-term disability claim process may result in a pay delay and/or discrepancy in pay.

Compliance Training: If you are assigned compliance training while on a leave of absence, and that training becomes overdue, you will receive one or more overdue notices upon your return to work. Please ensure you take the applicable training within one week of your return to work to ensure compliance.

In addition, because your leave request is due to your own serious health condition, the attached Physician's Return to Work form must be completed and sent to Leave Management prior to your return. This information should be faxed to 1-866-620-8941.

If you have any questions, please contact Leave Management at 1-888-348-4835, Option #1.

Sincerely,

Leave Management Team
First Data HR Service Center

EXHIBIT H

Emory Healthcare-Confidential Document

This information is subject to all Federal and State laws regarding confidentiality and privacy and to the policies and procedures of Emory Healthcare regarding patient information. Any unauthorized use, disclosure, or reproduction of this information is strictly prohibited.

ENT Historical Documents

BARGER, STEVEN BRUCE - TEC_00012689295

* Final Report *

Document Type: ENT Historical Documents
Document Date: January 10, 2017 10:52
Document Status: Auth (Verified)
Document Title: Return to work
Performed By: Parrish, Ashley on January 10, 2017 10:53
Verified By: Parrish, Ashley on January 10, 2017 10:53
Encounter info: 37094980, TEC, TEC Visit, 1/10/2017 -

*** Final Report ***

Steven Barger is a patient of Dr. Harry Baddour. He is cleared to return to work on 01/17/17 without any restrictions.

Thank you,

Ashley Parrish, RN
Department of Otolaryngology
Head and Neck Surgery
(404) 778-3381

Signature Line

Electronically Signed by: Parrish, Ashley on 01.10.17.10:53 AM

Printed by: Parrish, Ashley
Printed on: 01/10/2017 10:53

Page 1 of 1
(End of Report)

EXHIBIT I

https://www.firstdata.com/en_us/about-first-data/leadership-team/anthony-marino-bio.html

Anthony S. Marino

Executive Vice President and Head of Human Resources



Anthony (Tony) S. Marino joined First Data in March 2015 as Executive Vice President and Head of Human Resources. He leads the global HR team in its continued support of First Data's ongoing transformation from a payments processor to a collaborative technology company and solutions provider for merchants and financial institutions around the world. Tony's team is responsible for attracting, developing and retaining the talent necessary to achieve First Data's ambitious goals and in building the high-performance culture necessary for continued domestic and global expansion.

Tony is a seasoned HR executive with an outstanding background in financial services. He most recently served as EVP & chief human resources officer (CHRO) at The Guardian Life Insurance Company and prior to that he was general manager of global HR and CHRO at Bank of Tokyo-Mitsubishi UFJ, one of the largest bank holding companies in the world, where he was the first American appointed to an office in Japan in BTMU's 130-year history. Tony was previously CHRO at Ally Financial, where he was instrumental in the restructuring and turnaround of the nation's largest auto finance company. As a certified Six Sigma black belt, he was key to the enterprise-wide implementation of Six Sigma at Bank of America.

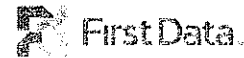
Earlier in his career, Tony worked for AlliedSignal (now Honeywell) and Pepsi Food Systems, two companies long known for HR best practices. His roles have included global assignments in Europe and Asia.

Tony is chairman of the University of North Carolina - Wilmington International Advisory Board. He is also a frequent lecturer on HR topics and the author of a leadership-

development workbook series titled "The LeaderSource" in addition to numerous articles on leadership and performance. He received his bachelor's degree in business administration from Ohio University.

Tony is as a member of the Management Committee and reports to Frank Bisignano, First Data's Chairman and Chief Executive Officer.

EXHIBIT J



June 12, 2014

Mr. Steve Barger
6200 Foxwood Trail
Birmingham, AL 35242

Dear Steve:

It is my pleasure to extend this offer of employment with First Data. We are looking forward to you joining us, reporting to me, as SVP, Sales Transformation. If you choose to accept this offer we will agree a mutually agreeable start date.

Total Compensation

At First Data we operate under a total compensation philosophy. Your compensation will have a high degree of variability based on First Data's success and your individual contributions to that success.

Your starting total annual compensation opportunity will be \$730,000, with \$480,000 in base compensation and \$250,000 in variable compensation, which will be delivered in all cash.

Immediately after your start you will receive an equity grant. The equity grant will be comprised of 300,000 options which will time vest equally over the next three years on the anniversary of the grant.

Equity Ownership and Long Term Incentives

First Data has a strong culture of ownership where all employees have equity ownership opportunities. As owners, we all pull together every day in support of each other, our clients and First Data's success.

You will be eligible to participate in First Data's long term incentive equity ownership program. Your participation is governed by, and subject to your execution of, and compliance with, the applicable plan documents and terms and conditions. You will be provided additional details after your employment begins. You will be required to sign an agreement that may contain nonsolicitation, noncompetition, and nondisclosure commitments.

Benefits

You will be eligible to participate in the Company's benefit programs. If you would like more information about our benefits offerings, you can go to <http://www.firstdatabenefits.us/>.

Prior Agreements with Former Employers

We understand that there are no contractual restrictions on your ability to perform your anticipated role with First Data. First Data will not request, and expects that you will not use, any former employer's confidential information to benefit First Data; nor do we believe that such use would be necessary for you to perform any of your employment responsibilities.

Other Agreements

As a condition of your employment, you will be required to sign an agreement containing restrictive covenants and provisions for the protection of confidential information and trade secrets.

LBZ 6/22/14

Employment Eligibility Requirements

To confirm your identity and work authorization status, you must complete a Form I-9. First Data uses a secure online I-9 program to confirm work authorizations and validity of social security numbers of all new hires. Within three days of starting work you must present documentation to a designated First Data representative. A list of acceptable documents can be found at www.dhs.gov. Please bring this documentation with you on your first day.

This offer is also contingent on First Data receiving favorable results from your background investigation and drug screening, and on completion of all new employee paperwork (which will be sent in a separate email).

At Will Statement

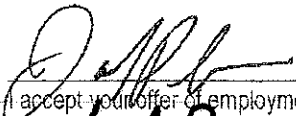
Please understand that this offer does not constitute a contract or a guarantee of continued employment for any period of time. As is the case throughout First Data, employment is "at will" and may be terminated by either you or First Data at any time for any reason.

Acceptance

Steve, I am excited to consider you as part of our team. We have much to accomplish and I know your leadership will be instrumental in making First Data a huge success story. I hope you will accept this offer. Please indicate your decision and confirm your acceptance of this offer under the terms described in this letter by signing, dating, scanning and emailing a copy of this letter to Kim.Hoefer@firstdata.com

Sincerely,

Joe Plumeri
Vice Chairman, First Data
Client Delivery, Innovation and Marketing



I accept your offer of employment as described in this letter.

Steve Buyer 6/22/14

Date:

6/13/14

EXHIBIT K

[illegible]


ents , Law Firm Documents , 20170101 Steve Barger , Evidence , Job Postings

	Date modified	Type	Size
Indexed Site Postings pg2	2/27/2017 9:46 AM	Post Reader PDF ...	462 KB
Indexed Site Postings pg3	2/27/2017 9:46 AM	Post Reader PDF ...	461 KB
Indexed Site Postings pg4	2/27/2017 9:46 AM	Post Reader PDF ...	417 KB
Indexed Site Postings	2/27/2017 9:46 AM	Post Reader PDF ...	918 KB
Twitter FDJobs Feed	2/27/2017 10:00 AM	Post Reader PDF ...	17,341 KB

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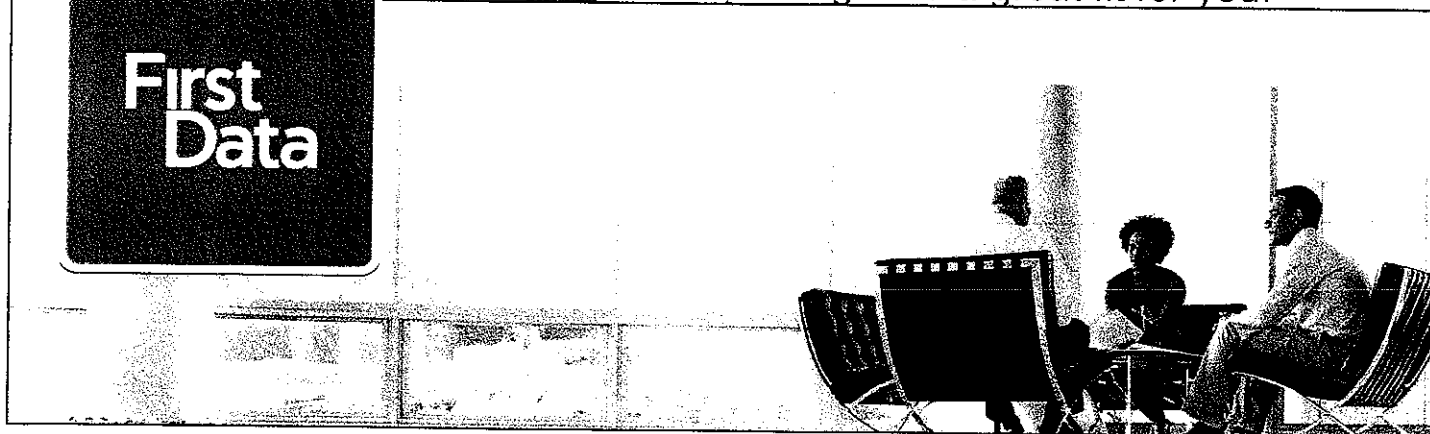
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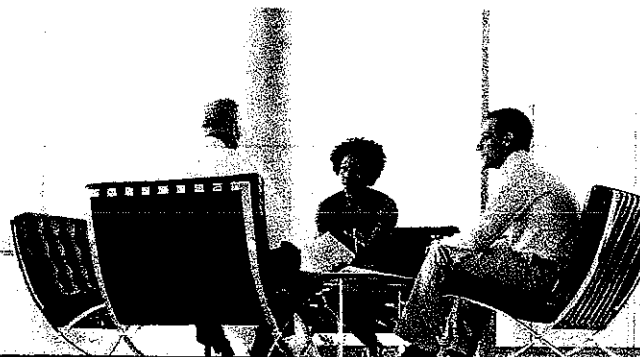
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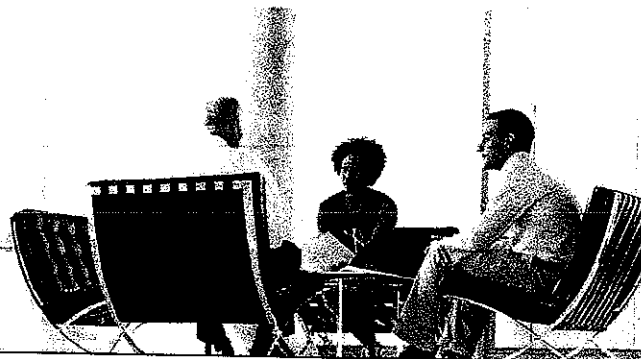
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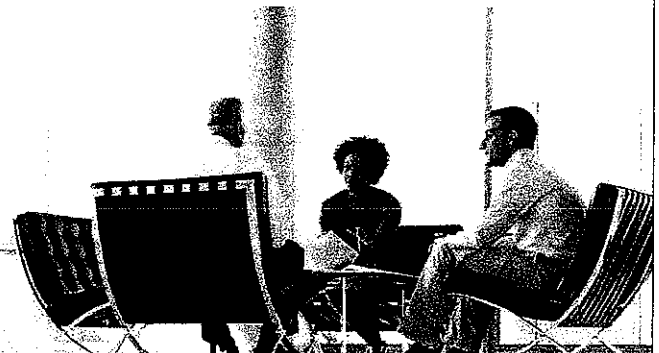


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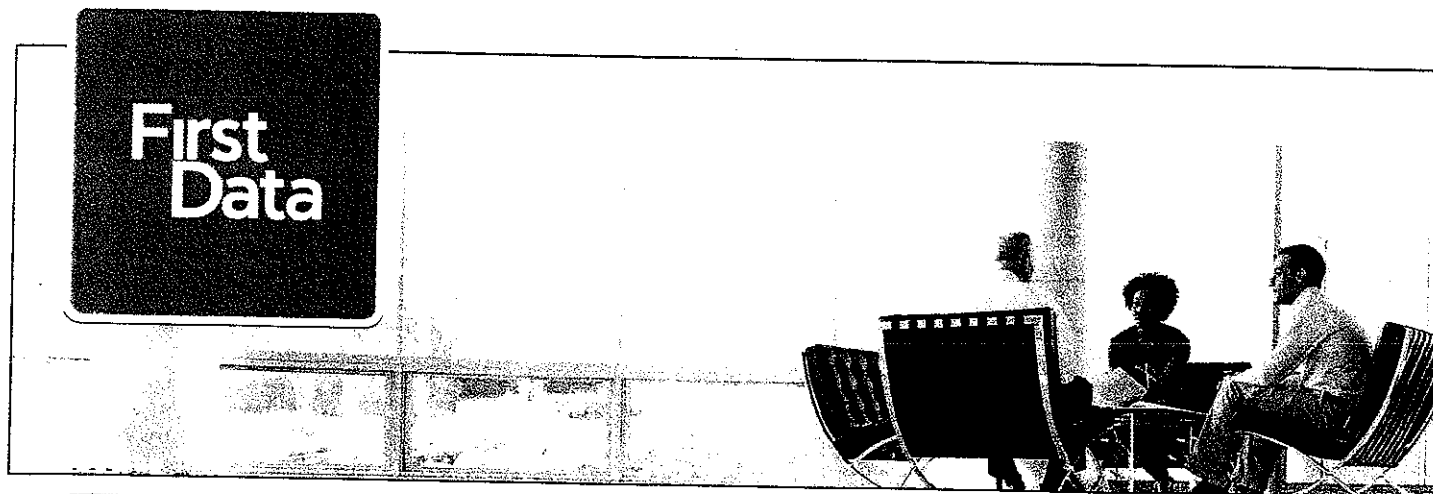
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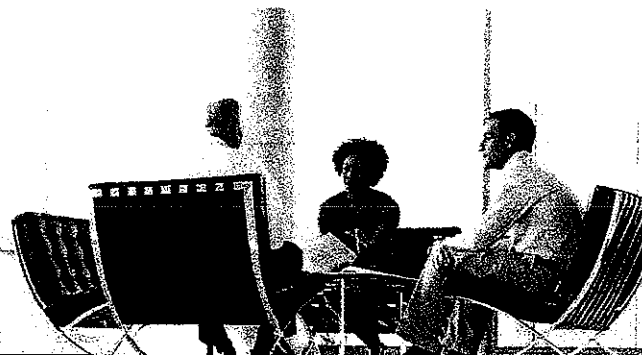
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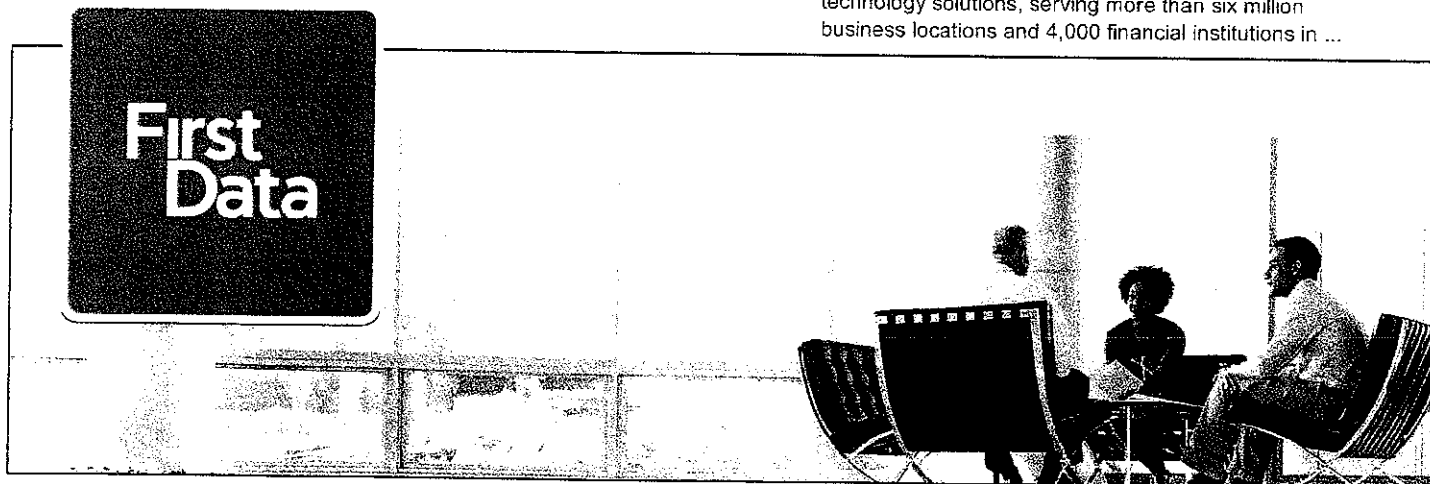


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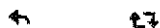


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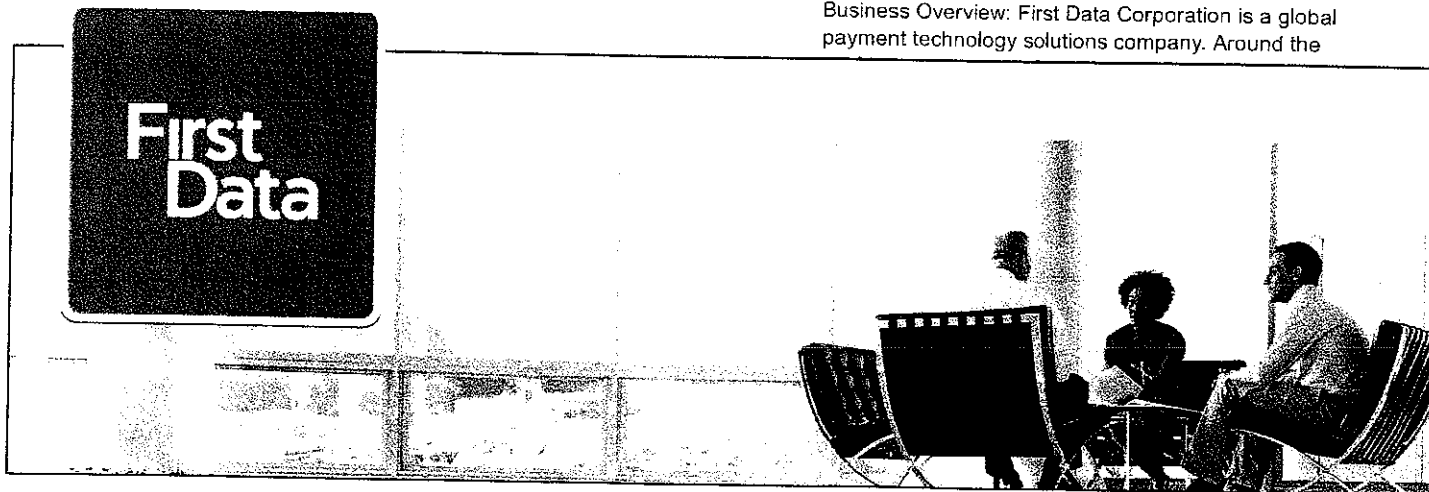


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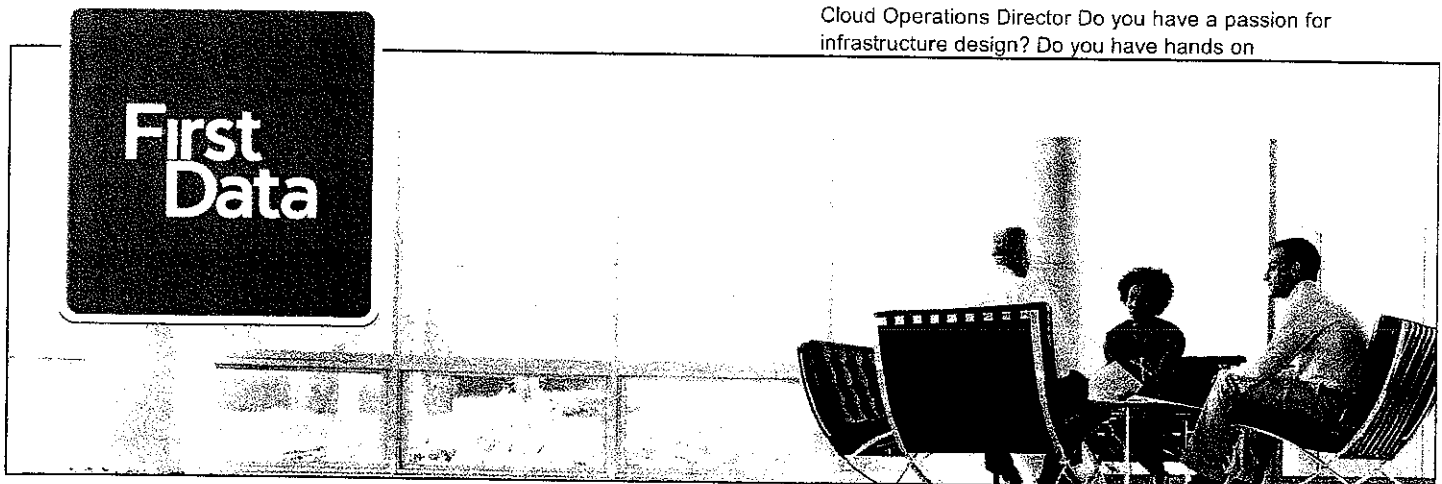


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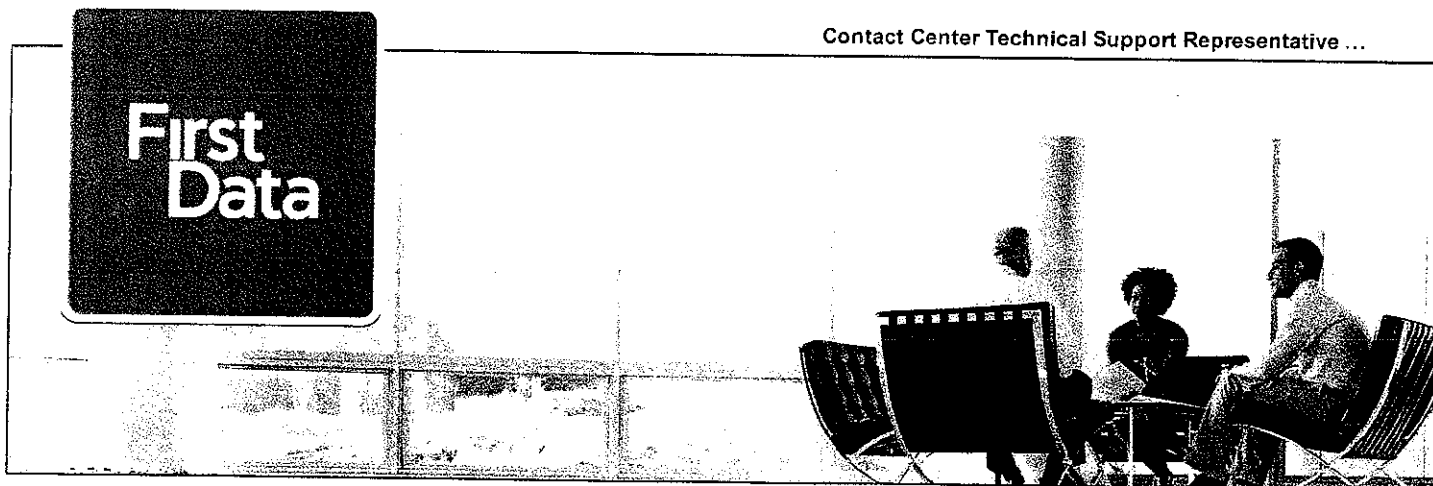
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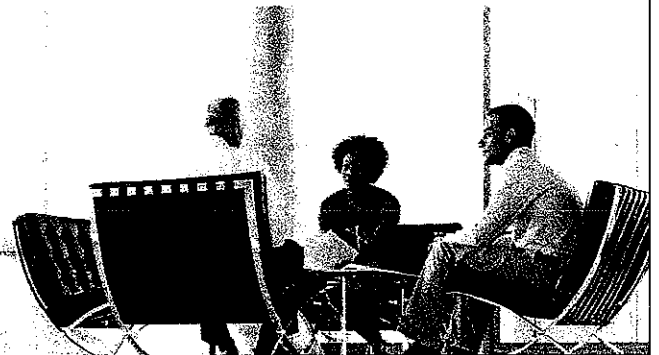
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Wachsen Sie mit uns in einer zukunftssicheren Branche und bewerben Sie sich als Telefonischer Kundenbetreuer Inbound (m/w) in Vollzeit oder Teilze...

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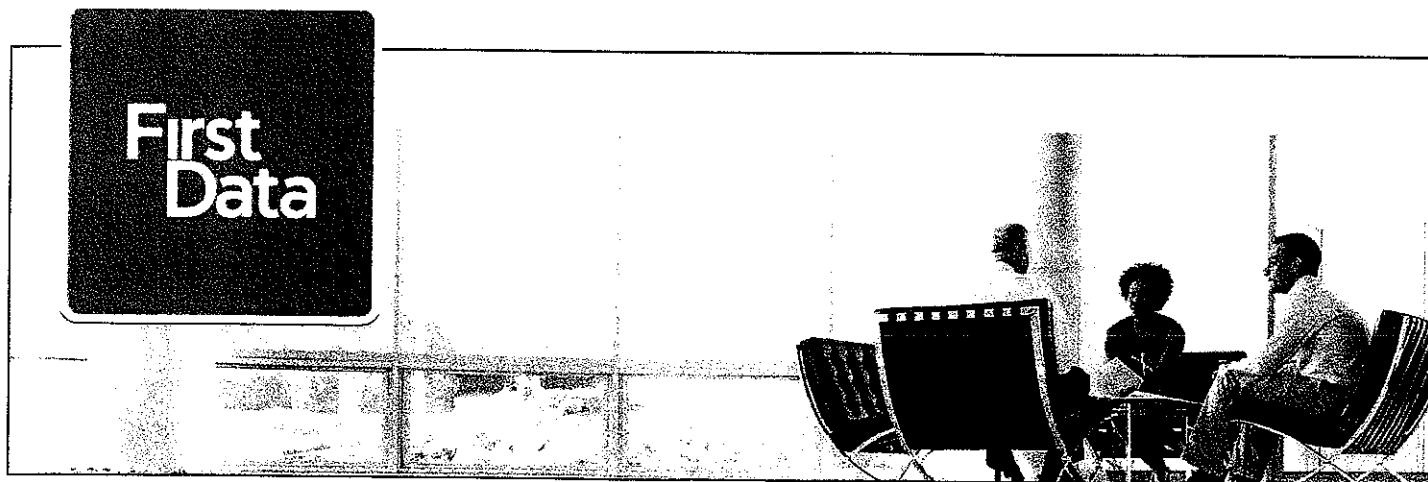
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[#Hiring](https://bit.ly/2D498ET)

Security Engineer-Crypto Technology in Omaha, NE

Position Description OverviewFirst Data's Global Cyber Security & Fraud group is seeking a motivated and outgoing individual for a Security Engineer position withi...
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Security Engineer I - Data Manager in Omaha, NE

Position Description: First Data's Global Cyber Security & Fraud group is seeking a motivated and out-going individual for a Data Manager position within its Crypt...
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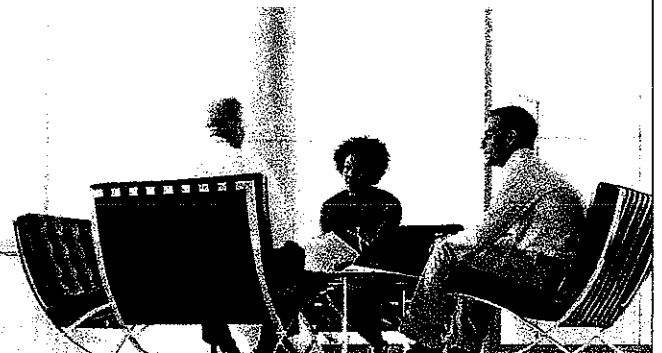


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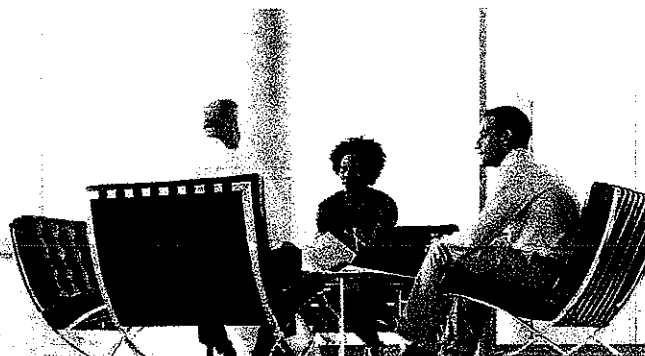


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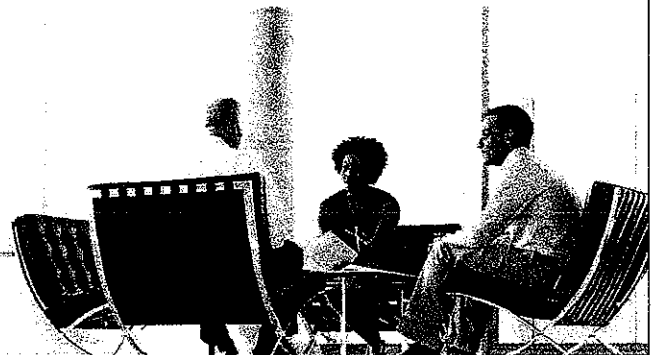


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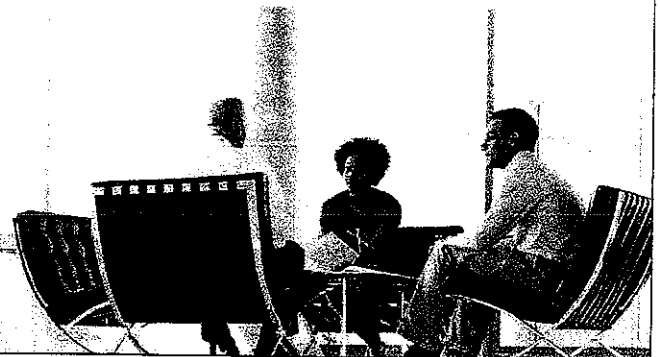
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Product Manager in Melville, NY

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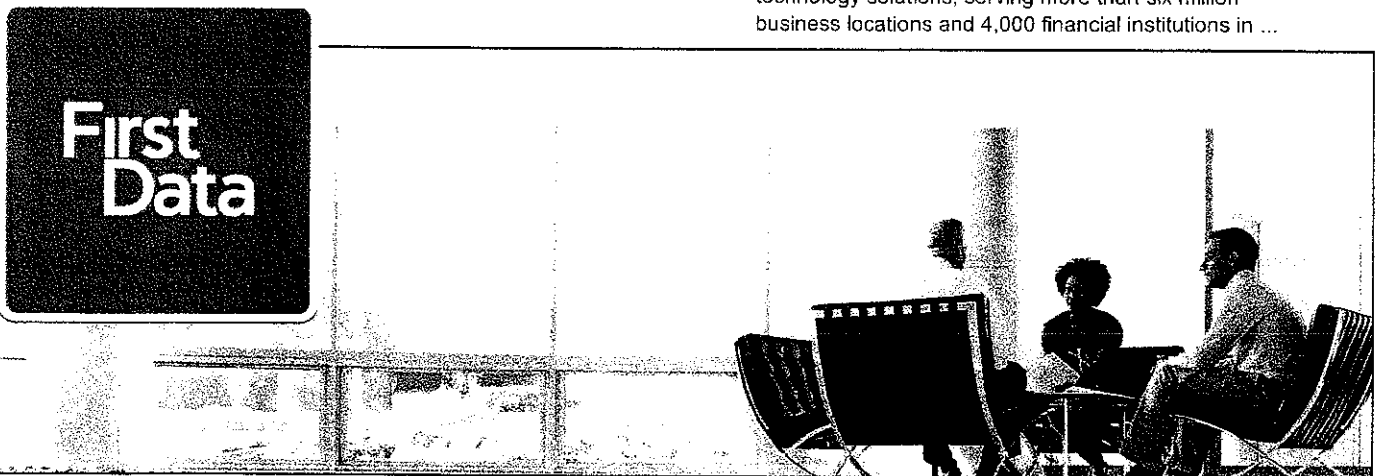
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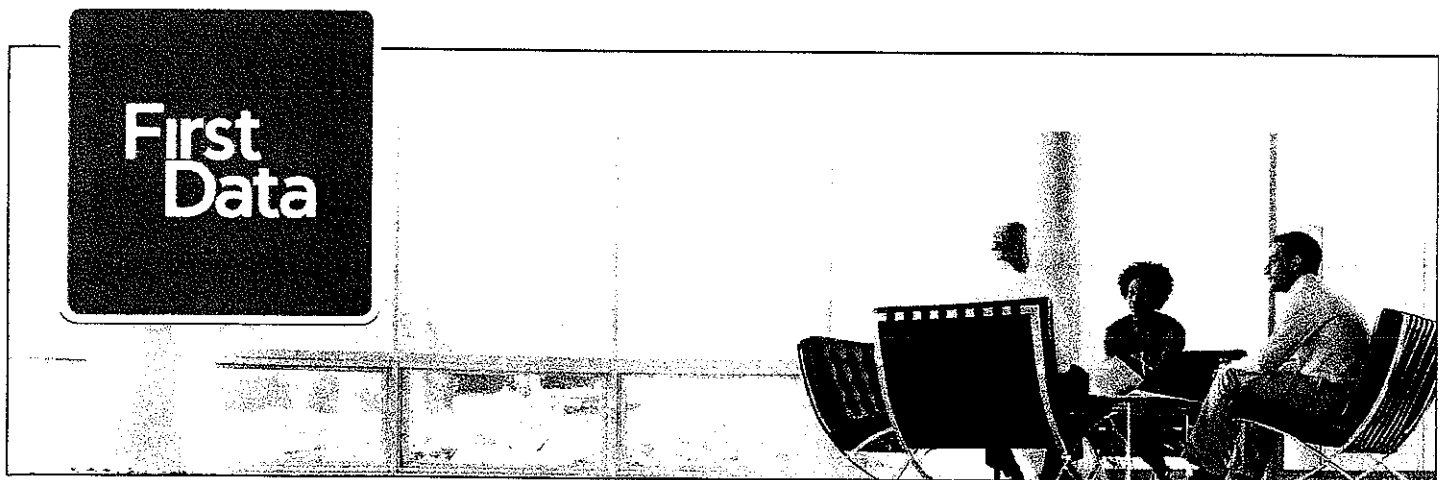
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Short Cycle Salesperson in Warsaw

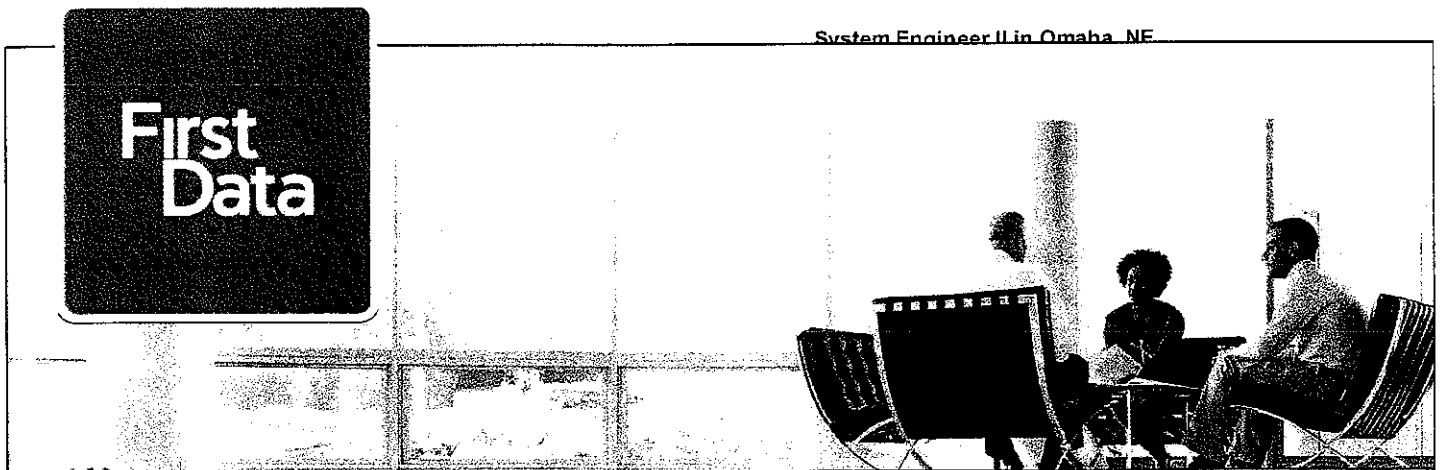
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System Engineer II in Omaha, NE



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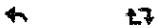
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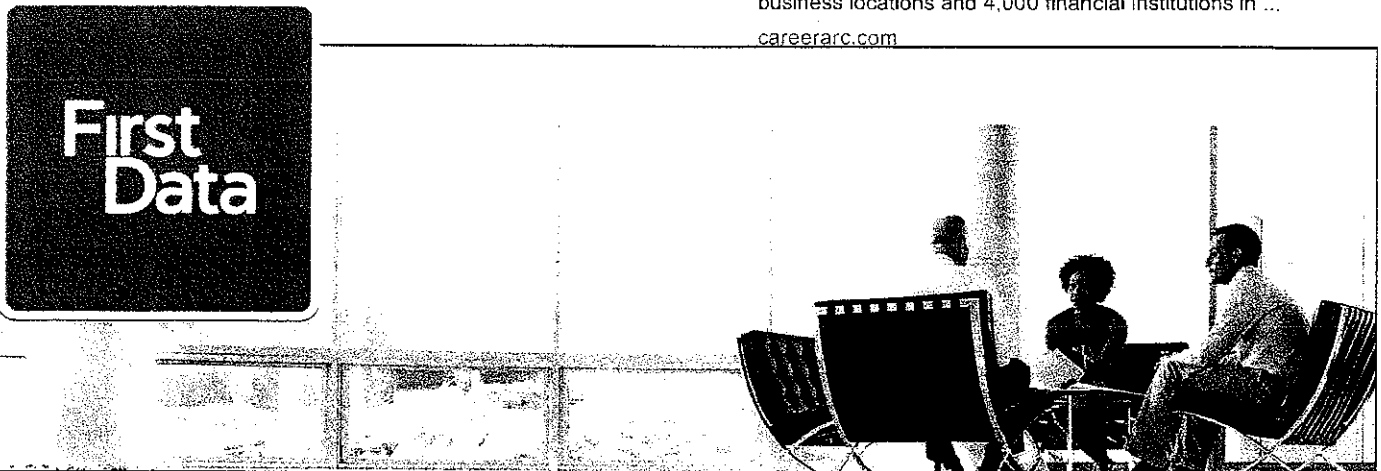
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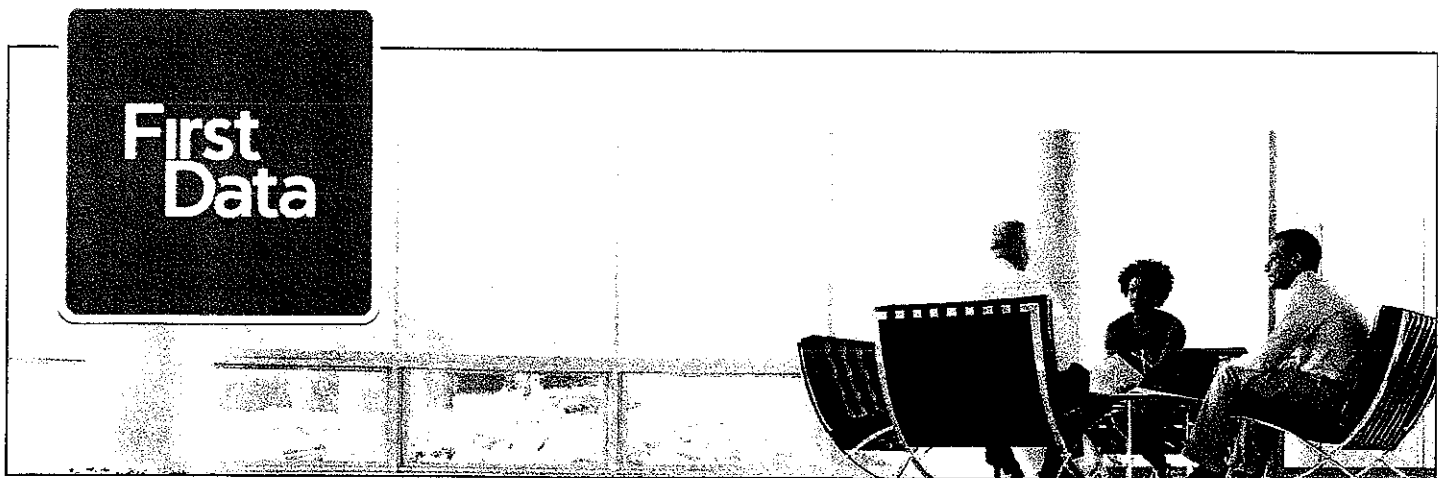
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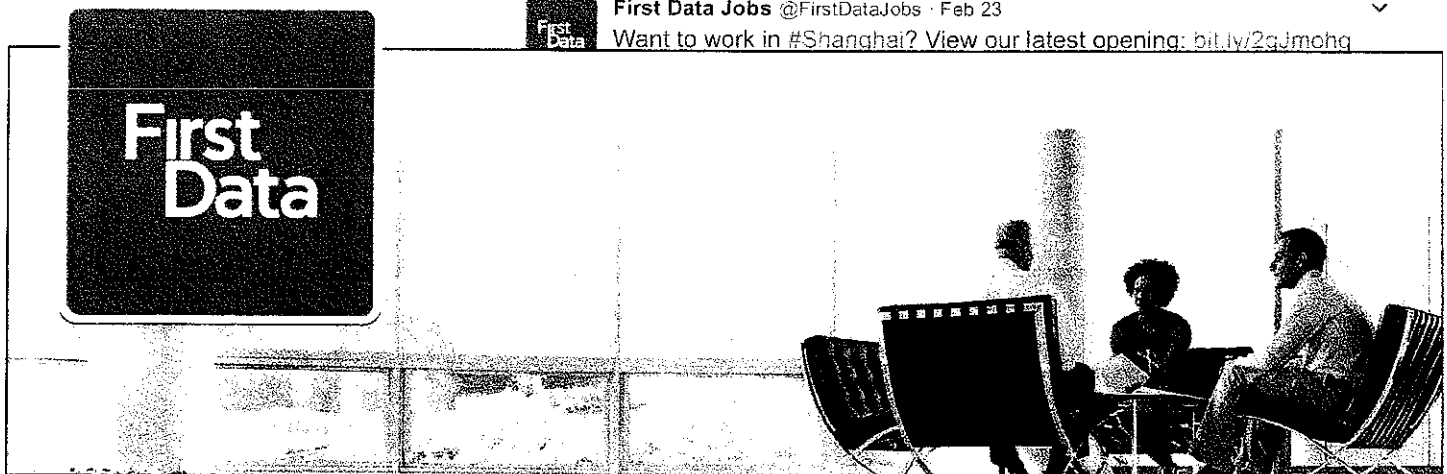
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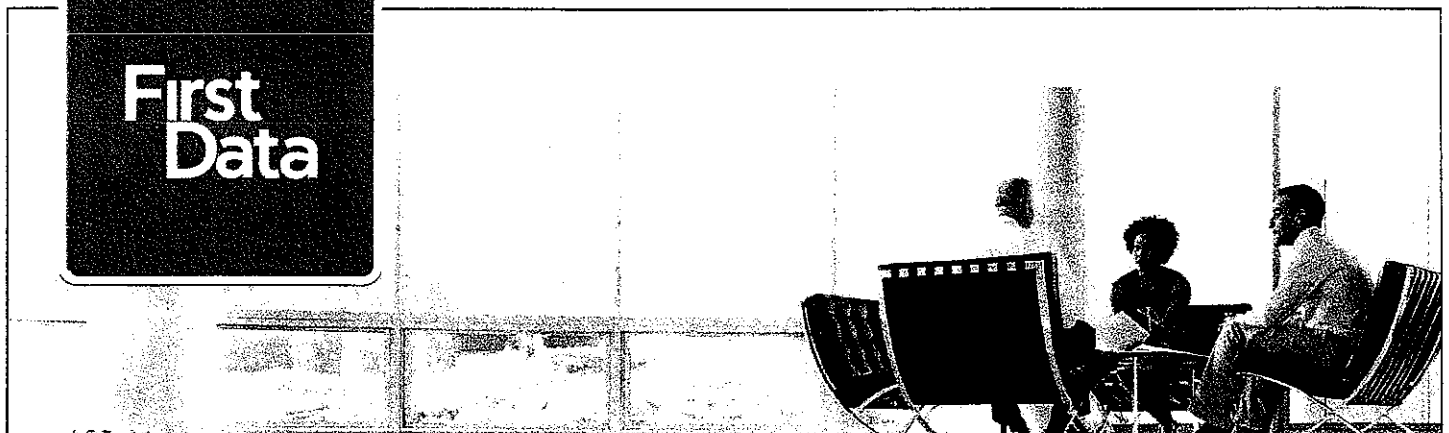
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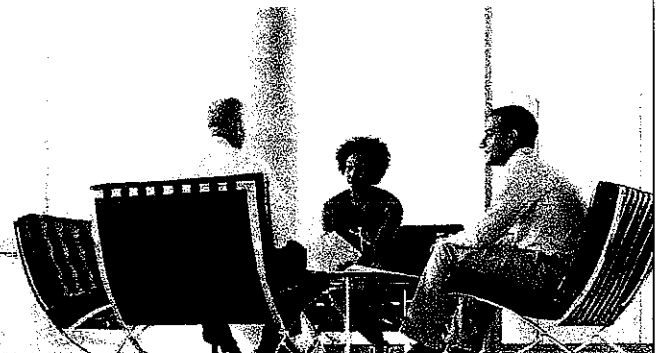
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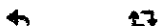
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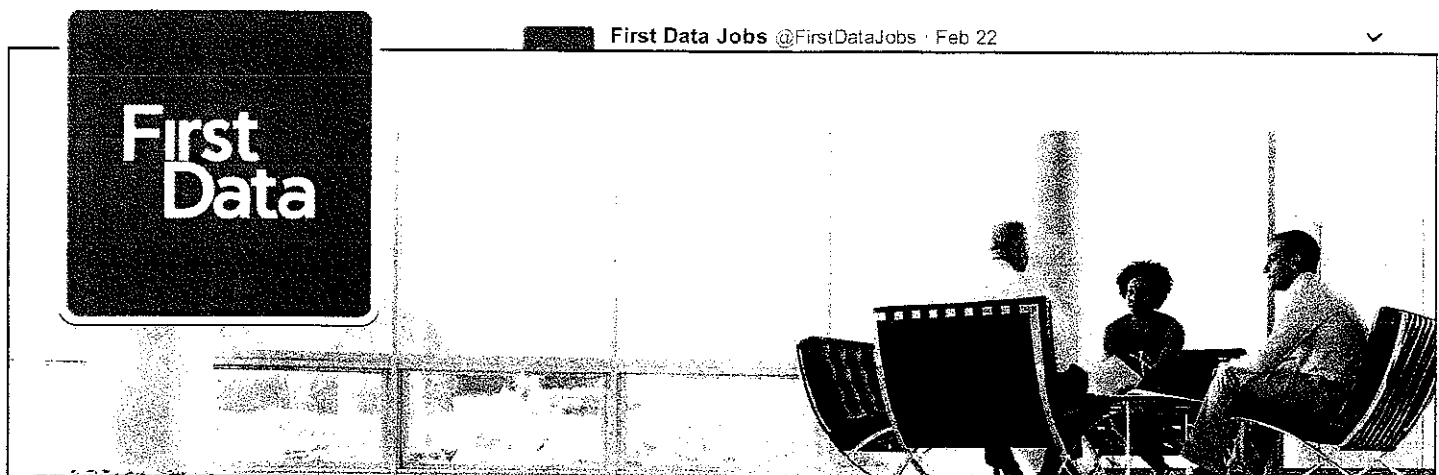


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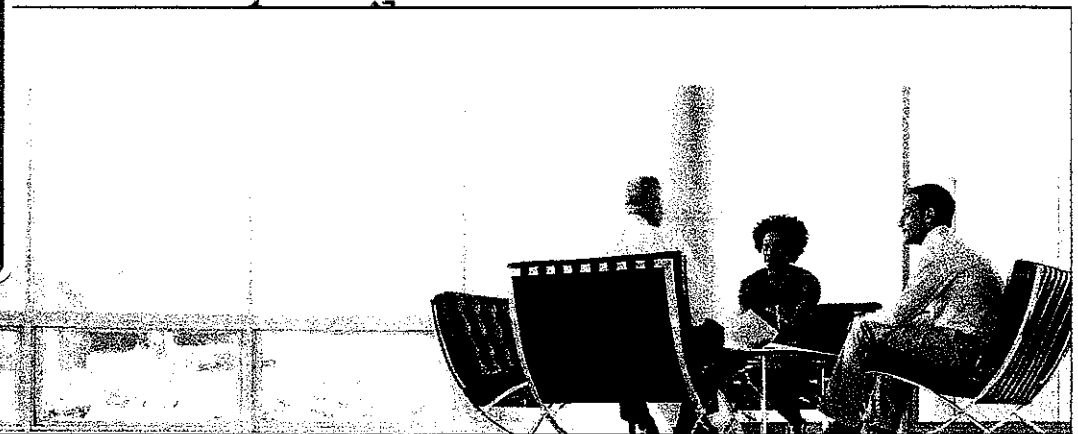
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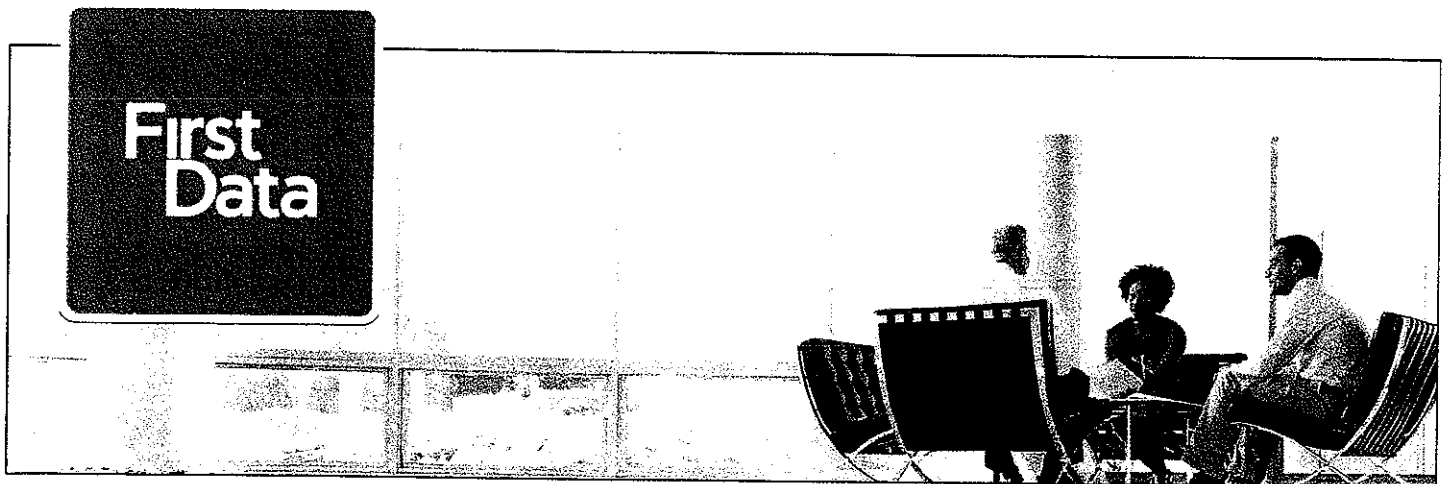
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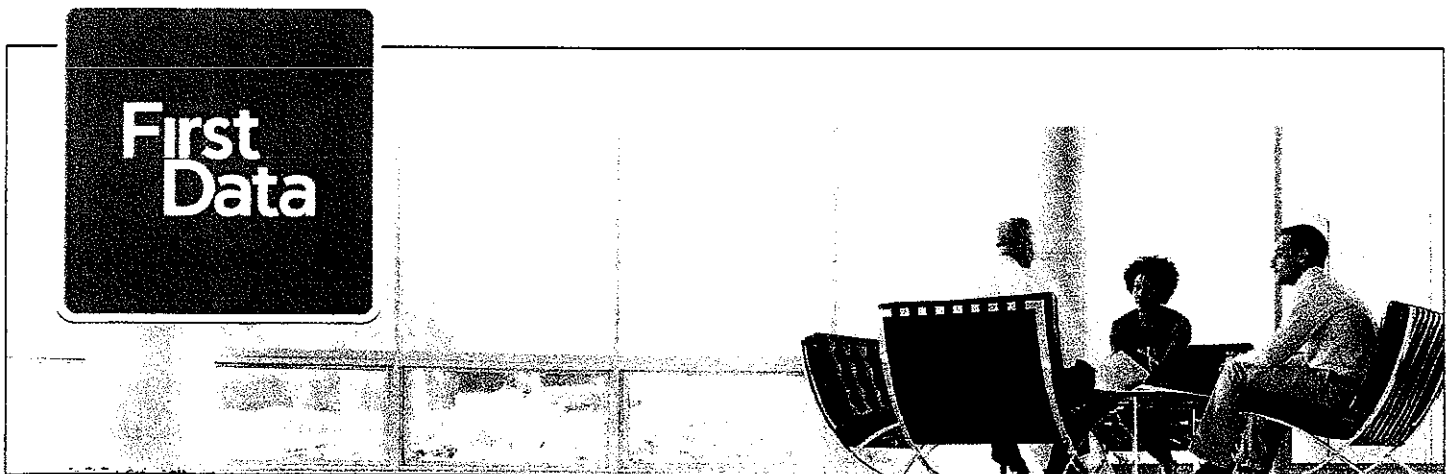
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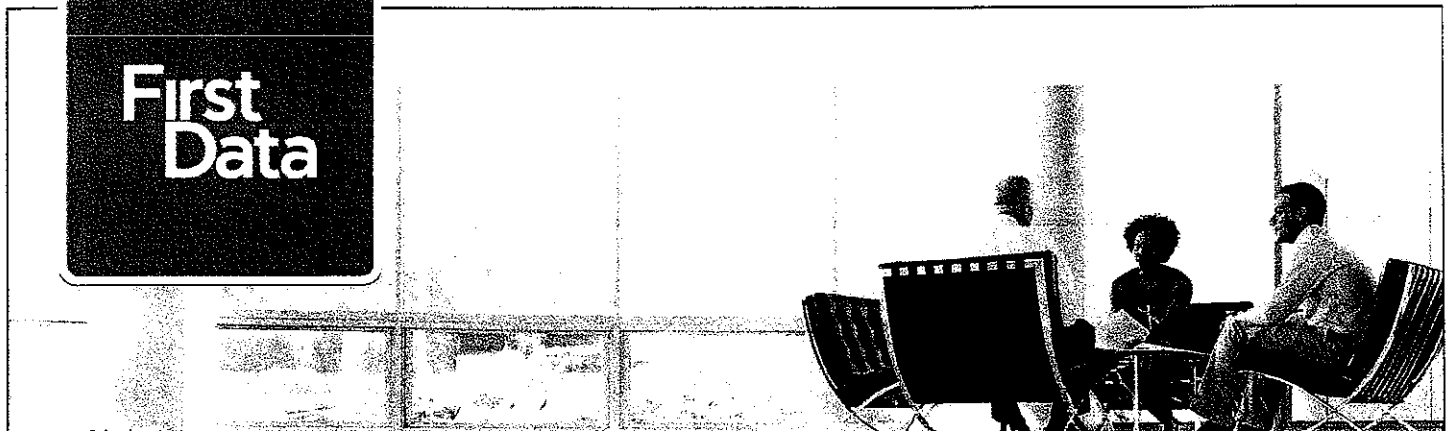
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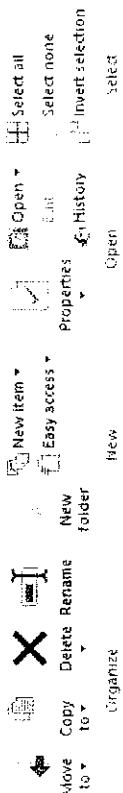
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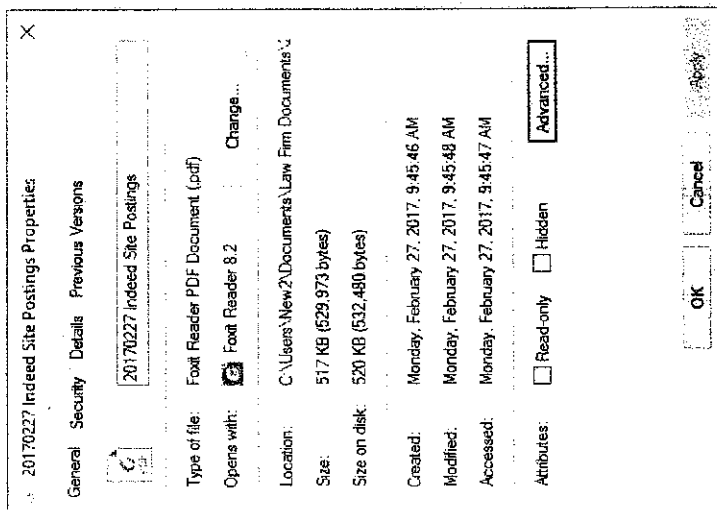
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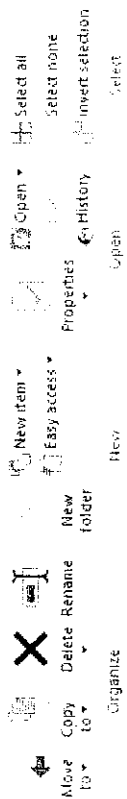
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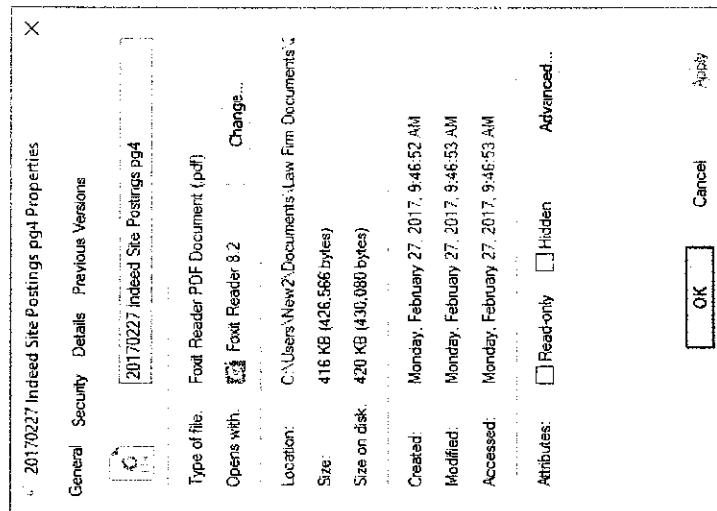
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Job Type

Software Engineering Manager

First Data -
First Data is an Equal Opportunity Employer
(Minorities/Females/Vets/Disabled/LGBT). Software Engineering Manager
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Mobile Android Developer

First Data -
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Finance Manager

First Data -
First Data is an Equal Opportunity Employer
(Minorities/Females/Vets/Disabled/LGBT). Our Finance Services employees bring the common expertise that helps First Data
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Director Accounting

First Data -
First Data is an Equal Opportunity Employer
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University: Sales Associate Program (New and Recent Graduate)

First Data -
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Senior Accountant

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Job Type

Full-time

Contract

Internship

Temporary (2)

Location

Atlanta, GA 303

Marietta, GA 300

First Data Inc. Marietta

Company

First Data Inc.

Experience Level

Nov. Level (16)

Ex. H. Level (9)

Senior Level (6)

Software Engineering Manager

First Data - 1,528 reviews - Marietta, GA 30064

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Mobile Android Developer

First Data - 1,528 reviews - Atlanta, GA 30342 (Buckhead area)

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Finance Manager

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What does a First Data Sales Analyst do? First Data Corporation is a global payment technology solutions company....

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First Data - 1,528 reviews - Atlanta, GA 30342 (Buckhead area)

First Data is an Equal Opportunity Employer

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Sales Associate

First Data - 1,528 reviews - Atlanta, GA 30342 (Buckhead area)

First Data is an Affirmative Action - Equal Opportunity

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EXHIBIT L

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JavaScript Developer - Coral Springs, FL or Atlanta, GA in Atlanta, GA
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We're hiring! Read about our latest #job opening here: Application Analyst/Java Developer - bit.ly/2svbqjp #IT #CoralSprings, FL

Application Analyst/Java Developer in Coral Springs, FL
First Data
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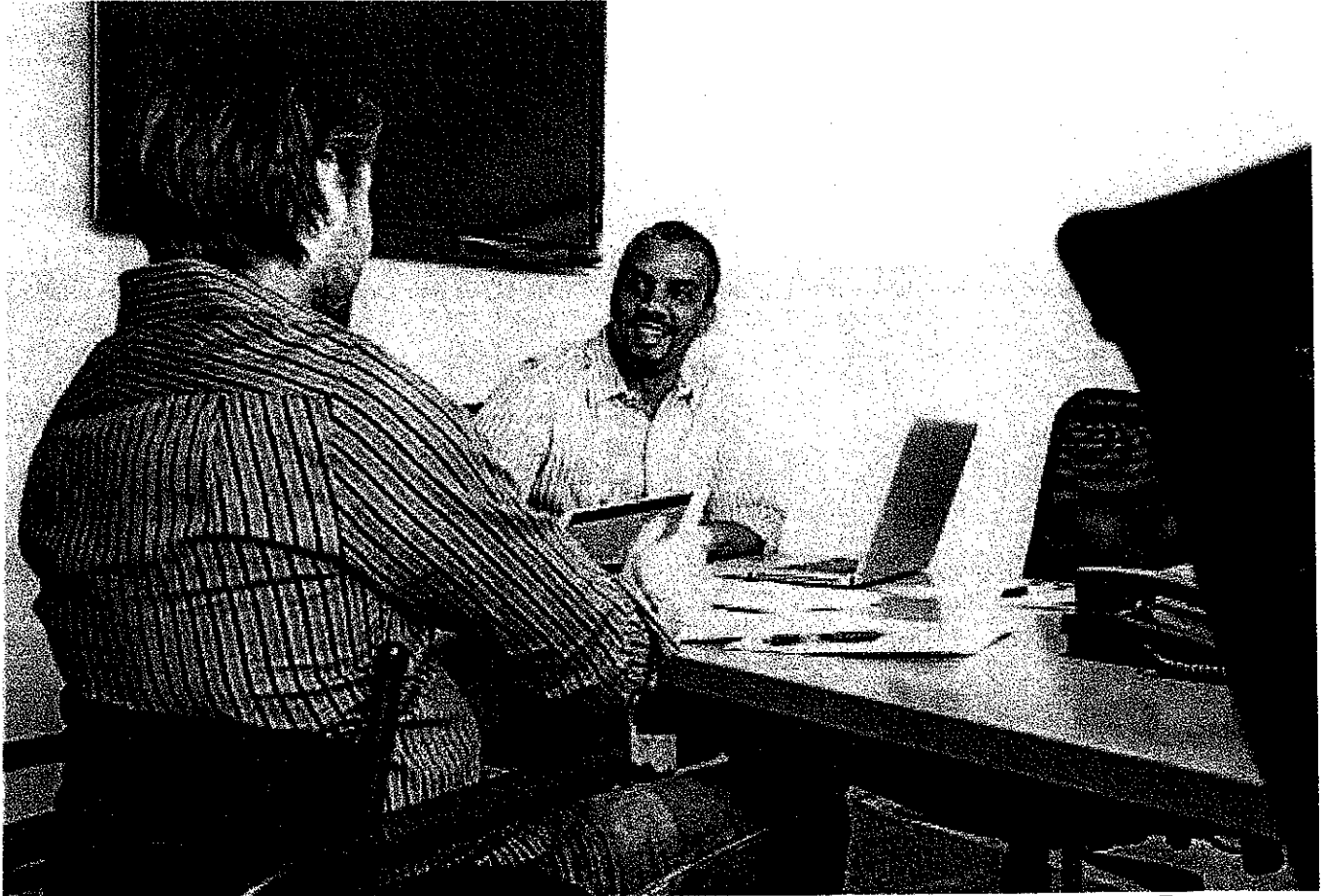
First Data Jobs Retweeted

MCCB Internships @MCCBInterns 7/28/16
Senior Jonathan Murphy is learning some tricks of the trade this summer at @FirstData #MCCBSTRONC bit.ly/ZaokyOz

First Data Jobs Retweeted

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Ready to talk with some great veterans at @hiringourheroes career fair in Chesapeake Va @FirstData @FirstDataJobs

EXHIBIT M



A CHALLENGE WE NEED TO **ACT ON** TOGETHER **!**

We live in a world of complex tensions that can have significant impact on our communities. But when we come to work – the place where we spend the majority of our time – we often don't openly address these topics.

~~COLLECTIVE ACTION~~

Collective action on diversity from the business community matters more than ever. By 2050 there will be no racial or ethnic majority in the US as traditionally under-represented groups become the majority.¹

Research shows that diversity increases creativity and innovation, promotes higher quality decisions, and enhances economic growth.

¹ Cárdenas, V., Ajinkya, J. and Léger, D.G. (2011). Progress 2050: New Ideas for a Diverse America. (https://www.americanprogress.org/wp-content/uploads/issues/2011/10/pdf/progress_2050.pdf)² Washington, D.C. Center For American Progress. United States Department of Labor. (2017). Persons with a Disability: Labor Force Characteristics Summary (<https://www.bls.gov/news.release/disabl.nr0.htm>).³ United States Department of Labor (2017). EMPLOYMENT SITUATION OF VETERANS – 2016 (<https://www.bls.gov/news.release/pdf/vet.pdf>).⁴ Desilver, D. (2016, September 1). 10 facts about American workers (<http://www.pewresearch.org/fact-tank/2016/09/01/8-facts-about-american-workers/>).

18%

17.9% of persons with a disability were employed.²

21

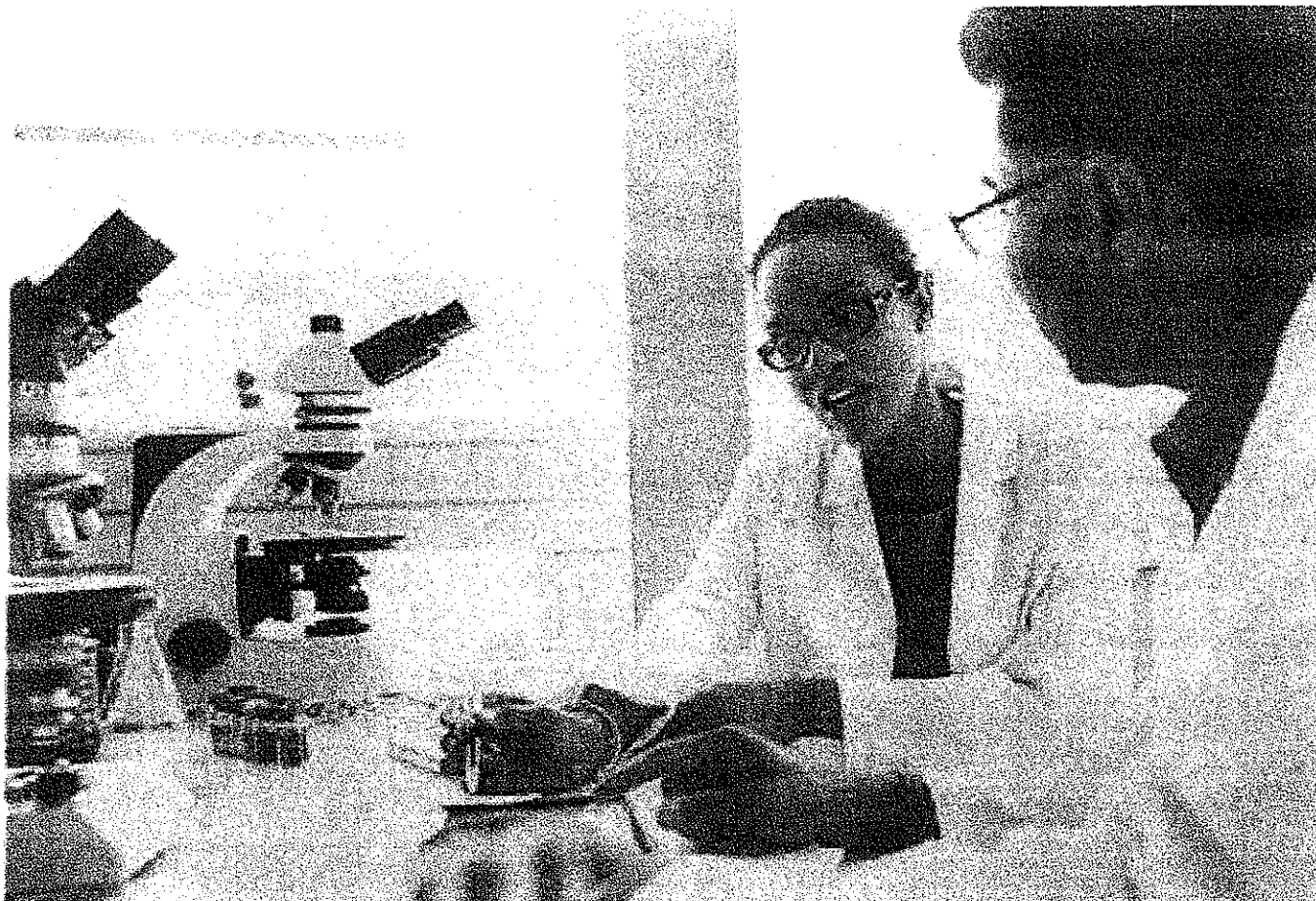
million men and women were veterans.³

19%

18.8% of Americans ages 65 and older – nearly 9 million people – are employed full- or part-time.⁴

WHAT WE'RE DOING

The CEO Action for Diversity & Inclusion™ is the largest CEO-driven business commitment to advance diversity and inclusion within the workplace. This commitment is driven by a realization that addressing diversity and inclusion is not a competitive issue, but a societal issue. CEOs recognize that change starts with them. With more than 150 CEOs of the world's leading companies and business organizations, our goal is to leverage our individual and collective voices to advance diversity and inclusion in the workplace.



COLLECTIVELY WE'LL **ACT ON** DIVERSITY AND INCLUSION **!**



FAQs

1/6

General

When did the CEO Action for Diversity & Inclusion™ initiative launch?



What is the CEO Action for Diversity & Inclusion™?



Do signatories have to agree to execute against all Pledge commitments?

Yes. As part of signing on to the **CEO Action for Diversity & Inclusion™**, CEOs are committing to implementing all of the elements within the pledge.

Who created the commitment?**How do you determine who else can join this effort?****How is the CEO Action for Diversity & Inclusion™ different?**

Actions

Do signatories have to agree to execute against all Pledge commitments?



Who created the commitment?



How do you determine who else can join this effort?



How is the CEO Action for Diversity & Inclusion™ different?



Is this commitment aimed at benefiting one group?



Are there financial contributions as part of the CEO Action for Diversity & Inclusion™?



Actions

You say this commitment is all about action – what specific action(s) will signatories be taking?



The **CEO Action for Diversity & Inclusion™** are taking three essential actions. First, each of the signatories are focused on cultivating workplaces that support open dialogue on complex, and sometimes difficult, conversations about diversity and inclusion.



Second, we believe that there is a gap in the market around sharing and collaborating across enterprises in order to advance this issue within the business community. Some are making strides while others aren't, and there are valuable lessons to be shared and learned in both of those experiences. To facilitate the exchange of actions, we built a hub that enables companies to share best known actions across different areas of diversity.

Finally, each signatory has agreed to implement unconscious bias training in their respective organization, and those who have already done so are committing to mentor others so they can effectively implement this training.

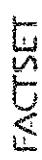
CEO ACTION FOR DIVERSITY & INCLUSION

About | The Pledge | CEOs | Actions | Media | Contact



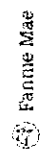
EY

Steve Howe*



FactSet Research Systems Inc.

Phil Snow



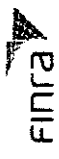
Fannie Mae

Tim Mayopoulos



Fifth Third Bank

Greg Carmichael



Financial Industry Regulatory Authority, Inc.

Robert Cook



First Data

Frank Bisignano



FirstEnergy

Chuck Jones



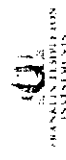
FIS

Gary Norcross



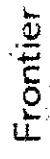
Flagstar Bank

Sandro DiNello



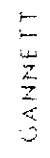
Franklin Templeton Investments

Greg Johnson



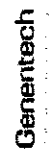
Frontier Communications

Dan McCarthy



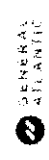
Gannett Co.

Robert Dickey



Genentech

Bill Anderson



General Atlantic

Bill Ford*



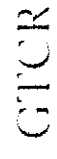
General Mills

Jeff Harmering



Great Place to Work

Michael C. Bush



GTCR

Craig Bondy



The Guardian Life Insurance Company

Deanna Mulligan

EXHIBIT N

First Data Releases New Paid Parental Leave Policy (/en_us/about-first-data/media/press-releases.html)

First Data Unveils New Paid Parental Leave Policy

22 Dec 2016

Author: First Data (/en_us/about-first-data/media/press-releases.html?author=First+Data)

Category: Corporate (/en_us/about-first-data/media/press-releases.html?cat=Corporate)

*Progressive gender-neutral policy to provide primary caregivers
with twelve weeks of paid leave*

NEW YORK, December 22, 2016 – First Data (https://www.firstdata.com/en_us/home.html) (NYSE: FDC), a global leader in commerce-enabling technology, today announced a new workplace policy that provides fully paid parental leave to both full-time and part-time employees. The initiative is designed to provide parents, regardless of gender, with the critical time needed to care for their child without the financial constraints that come with unpaid leave.

Beginning in January, the policy includes 12 weeks of paid leave for primary caregivers, and two weeks of paid leave for secondary caregivers. The parental leave can be taken in connection with the birth of an employee's child – through natural birth or surrogacy – or the placement of an adopted or foster-care child in an employee's home. This policy will serve as a global baseline for First Data's parental leave, subject to local and country-specific laws.

"As our global team of 24,000 people celebrates the holidays with their families this year, we are thrilled to announce our new gender-neutral paid parental leave policy that puts families first," said Anthony S. Marino, executive vice president, Head of Human Resources at First Data. "At First Data, we believe that cultivating an environment where everyone can thrive professionally without sacrificing essential family obligations ultimately creates a more productive, long-serving and loyal workforce."

First Data's enhanced policy aligns with other companies known for offering employees the best benefits for new parents. According to the 2015 employer benefits of the Society for Human Resource Management, 21% of U.S. companies made some type of paid maternity leave available, while 17% offered paid paternity and/or adoption leave.

Employees must have worked at First Data for at least one year to become eligible. The first eight weeks of paid leave must be taken consecutively after delivery, adoption, or foster-care placement. The remaining four weeks can be used on an intermittent basis, either in the three months leading up to, or the six months after, the child's birth, adoption, or foster-care placement.

In recent years, First Data has undertaken a number of initiatives to strengthen company culture and foster a more open and inclusive workplace. This includes the development of eight employee-led affinity groups, as well as the introduction of enhanced benefits for LGBT employees. Recently, First Data earned a perfect score (https://www.firstdata.com/en_us/about-first-data/media/press-releases/12_05_16.html) on the 2017 Corporate Equality Index for the third consecutive year.

About First Data

First Data (NYSE: FDC) is a global leader in commerce-enabling technology and solutions, serving approximately six million business locations and 4,000 financial institutions in 118 countries around the world. The company's 24,000 owner-associates are dedicated to helping companies, from start-ups to the world's largest corporations, conduct commerce every day by securing and processing more than 2,500 transactions per second and \$1.9 trillion per year.

Media Contact

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212-515-0174

Liidia.Liuksila@FirstData.com (mailto:Liidia.Liuksila@FirstData.com)

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